

United States
Circuit Court of Appeals

For the Ninth Circuit.

13

NATIONAL LIBERTY INSURANCE COM-
PANY OF AMERICA, a Corporation,
Plaintiff in Error,

vs.

W. A. MILLIGAN,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Western District of Washington, Northern Division.

FILED

OCT 2 - 1925

F. D. MONCKTON,
CLERK

United States
Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL LIBERTY INSURANCE COM-
PANY OF AMERICA, a Corporation,
Plaintiff in Error,

vs.

W. A. MILLIGAN,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Western District of Washington, Northern Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Answer	8
Assignment of Errors.....	207
Bill of Exceptions.....	19
Certificate of Clerk U. S. District Court to Transcript of Record.....	223
Citation on Writ of Error.....	227
Complaint	2
Defendant's Proposed Bill of Exceptions.....	19

EXHIBITS:

Plaintiff's Exhibit No. 1—Insurance Agent's License, Dated April 15, 1924, Issued to Edward R. Voorhees.....	24
Plaintiff's Exhibit No. 2—Certified Copy of Appointment of Lamping & Com- pany as General Agents of National Liberty Insurance Company.....	27
Plaintiff's Exhibit No. 3—Certified Copy of Appointment of Lamping & Com- pany, Inc., as General Agents for the National Liberty Insurance Company.	29

	Index.	Page
EXHIBITS—Continued:		
Plaintiff's Exhibit No. 4—Certified Copy of List of Applications for Renewal of Agent's Licenses Dated March 21, 1924 of the National Liberty Fire Insurance Company of New York.....		32
Plaintiff's Exhibit No. 5—Certified Copy of Insurance Agent's License Issued to Edward R. Voorhees of Morton, Washington, April 15, 1924.....		35
Plaintiff's Exhibit No. 7—Certified Copy of Insurance Policy Issued to W. A. Milligan by National Liberty Insurance Company of America from June 1, 1924, to June 1, 1925.....		43
Plaintiff's Exhibit No. 8—Proof of Loss Issued to National Liberty Insurance Company of America, Signed by W. A. Milligan		68
Plaintiff's Exhibit No. 9—Check No. 299. Dated August 4, 1924. W. A. Milligan		83
Plaintiff's Exhibit No. 10—Letter Dated August 4, 1924, Wright & Wright to E. R. Voorhies.....		84
Defendant's Exhibit "A"—Letter Dated October 2, 1924, E. R. Voorhies to W. A. Milligan.....		87
Defendant's Exhibit "B"—Letter Dated July 23, 1924, E. R. Voorhies to Lamp- ing & Company.....		109
Defendant's Exhibit "C"—Letter Dated		

Index.

Page

EXHIBITS—Continued:

July 23, 1924, Lamping & Company to E. R. Voorhies.....	112
Defendant's Exhibit "D"—Letter Dated July 25, 1924, Lamping & Company to E. R. Voorhies.....	114
Defendant's Exhibit "E"—Blank Form of Insurance Policy Used by National Liberty Insurance Company of Amer- ica	144
Judgment	13
Motion for New Trial.....	15
Names and Addresses of Counsel.....	1
Opinion and Order Overruling Motion for New Trial	17
Order Allowing Writ of Error.....	217
Order Directing Certification of Original Ex- hibits	221
Order of Removal.....	7
Order Settling and Allowing Bill of Exceptions	204
Petition for Writ of Error.....	206
Praecipe for Transcript of Record.....	222
Reply	11
Stipulation Re Bill of Exceptions.....	203
Stipulation Re Printing Transcript of Record.	229

TESTIMONY ON BEHALF OF PLAINTIFF:

BAGLEY, A. W.....	96
Cross-examination	98
BERGON, STEPHEN J. (In Rebuttal)..	159
FISHBACK, H. O.....	21

Index.	Page
TESTIMONY ON BEHALF OF PLAINTIFF—Continued:	
FLETCHER, W. T.....	99
Recalled in Rebuttal.....	158
LAMPING, EDWARD.....	92
MACKIE, JUNE.....	94
Cross-examination	96
MILLIGAN, W. A.....	39
Cross-examination	85
Redirect Examination.....	91
Recalled in Rebuttal.....	165
MILLIGAN, Mrs. IDA (In Rebuttal)....	168
O'NEIL, JAMES A.....	37
VOORHEES, E. R.....	93
TESTIMONY ON BEHALF OF DEFENDANT:	
BRENNAN, JOSEPH T.....	132
Cross-examination	134
CRAWFORD, GEORGE M.....	135
Cross-examination	137
LAMPING, EVERETT.....	139
Cross-examination	156
Redirect Examination.....	158
MORRIS, CLAUD.....	137
Cross-examination	138
VOORHEES, E. R.....	101
Cross-examination	118
Recalled—Cross-examination	128

Index.

Page

TESTIMONY ON BEHALF OF DEFEND-

ANT—Continued:

Redirect Examination.....	130
Recross-examination	132
Time Granted to File Bill of Exceptions.....	18
Verdict	12
Writ of Error.....	225
Writ of Error Bond.....	218

NAMES AND ADDRESSES OF COUNSEL.

Messrs. BATTLE, HULBERT, GATES, & HEL-
SELL, Attorneys for Plaintiff in Error,
901 Alaska Building, Seattle, Washington.

ROBERT A. HULBERT, Esquire, Attorney for
Plaintiff in Error,
901 Alaska Building, Seattle, Washington.

FRED G. CLARKE, Esquire, Attorney for Plain-
tiff in Error,
1115 Alaska Building, Seattle, Washington.

ELIAS A. WRIGHT, Esquire, Attorney for De-
fendant in Error,
631 Burke Building, Seattle, Washington.

SAM A. WRIGHT, Esquire, Attorney for Defend-
ant in Error,
631 Burke Building, Seattle, Washington.

[1*]

*Page-number appearing at foot of page of original certified Tran-
script of Record.

In the Superior Court of the State of Washington,
in and for the County of King.

No. 176,465.

W. A. MILLIGAN,

Plaintiff,

vs.

NATIONAL LIBERTY INSURANCE COM-
PANY OF AMERICA, a Corporation,
Defendant.

COMPLAINT.

8952.

Comes now the plaintiff and for cause of action
against the defendant says:

I.

That the plaintiff is a resident of King County,
State of Washington.

II.

That the defendant is a corporation duly organ-
ized and existing and is doing a general fire insurance
business in the State of Washington, being au-
thorized and licensed so to do under the laws of the
State of Washington, and at all the times herein
mentioned has been doing business within King
County, State of Washington.

III.

That at all the times hereinafter mentioned one E. R. Voorhies was the duly authorized agent of the defendant at Morton, Washington.

IV.

That heretofore, to wit, on or about the 23d day of July, 1924, in consideration of the sum of five hundred dollars (\$500) to the defendant through its duly authorized agent, E. R. Voorhies, in hand paid by the plaintiff, the defendant did orally enter into a contract of fire insurance wherein and [2] whereby the defendant agreed to and did insure the plaintiff against all direct loss of damage by fire for a period of one year from the 23d day of July, 1924, at noon, to the 23d day of July, 1925, at noon, to an amount not exceeding the sum of ten thousand dollars (\$10,000.) in respect to the property insured, which said insurance was segregated as follows:

\$6,000.00 on the building situated on the north half of the east half of lots 1 and 2, and all of lot 11, block 4, in the Town of East Morton, Washington, being on the corner of 2d Avenue and 2d Street, and the alley in the Town of Morton, or East Morton, Washington,

and which was a hotel building then owned and being operated by the plaintiff; and

\$4,000.00 on the hotel or apartment or boarding or lodging house furniture, fixtures and furnishings, building materials, etc., and the residence furniture, fixtures and equipment, the pool hall furniture, fixtures and equipment, and

the barber shop furniture, fixtures and equipment, and all of which said personalty was likewise situated and located in the hotel building above referred to, and which said hotel building is further described as "facing east on 2d Street, Morton, Washington," fire map Block 13, Nos. 37, 38 and 39.

V.

That at and during all of the times herein mentioned the plaintiff, W. A. Milligan, was the sole owner of said insured property save and except that there was a mortgage on the real property owned and held by the Pacific Savings & Loan Association, and a chattel mortgage on the personalty owned and held by one S. J. Bergen, neither of which mortgages however were or are interested in this insurance, and were otherwise secured, and all of which was know to the defendant and its agent, E. R. Voorhies.

VI.

That on the 26th day of July, 1924, at about the hour of 1 o'clock A. M., a fire occurred whereby all of the said insured property, both the building insured and all of the personal [3] property covered by said oral contract of insurance hereinbefore referred to was completely destroyed by the said fire, and that the value of the building so destroyed was at least the sum of \$25,000, and the value of the personal property so destroyed was at least the sum of \$10,000.00.

VII.

That at the time of said fire and at the time of the destruction thereof and damage thereto, as aforesaid, all of the property referred to in said oral contract of insurance was located and contained in the place agreed upon in said oral contract of insurance, and not elsewhere.

VIII.

That after said fire, immediate notice thereof was given to the defendant, and the premium on said contract of insurance was paid by the plaintiff and received by the said defendant through its duly authorized agent, E. R. Voorhies, which said premium in the sum of \$500 defendant still retains and now has. That plaintiff promptly furnished defendant with due proof of said loss, wherein he claimed and stated said loss to be in the sum of \$10,000, and claimed of and from the defendant under said oral contract of insurance hereinabove referred to, the aggregate sum of \$10,000.

IX.

That the defendant however has denied the said oral contract of insurance in every particular, but still retains the premium for insurance which plaintiff has paid to it.

X.

That the plaintiff has in all respects performed and complied with all the terms, conditions and provisions of said oral contract of insurance on his part to be performed or complied with, and that there is now due and owing unto him under and

by virtue of said oral contract of insurance the full sum of \$10,000.00 from the defendant, demand for payment of which has [4] been made upon the defendant, but payment of which has not been made but on the other hand has been absolutely refused by the defendant, and by virtue of the premises plaintiff alleges that the defendant is indebted unto him in the full sum of \$10,000.00.

WHEREFORE plaintiff prays for judgment against the defendant in the full sum of \$10,000, together with interest thereon from this date until paid, and for his costs and disbursements in this action expended.

WRIGHT & WRIGHT,
Attorneys for Plaintiff.

State of Washington,
County of King,—ss.

W. A. Milligan, being first duly sworn, on oath deposes and says: That he is the plaintiff named in the above-entitled action; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

W. A. MILLIGAN.

Subscribed and sworn to before me this 19th day of August, 1924.

SAM A. WRIGHT,
Notary Public in and for the State of Washington,
Residing at Seattle.

Filed in County Clerk's Office, King County, Wash. Aug. 25, 1924. George A. Grant, Clerk.
By A. L. Lawrence, Deputy.

[Endorsed]: Oct 27, 1924. [5]

[Title of Court and Cause.]

ORDER OF REMOVAL.

This cause having come on for hearing this day upon the petition of the defendant National Liberty Insurance Company of America, a corporation, for removal of this cause to the United States District Court for the Western District of Washington, Northern Division, and said petition having been filed within the time provided by law, and the petitioner having, at the same time, offered its bond in the sum of Five Hundred Dollars (\$500.00) with the Standard Accident Insurance Company, of Detroit, Michigan, a good and sufficient surety, conditioned according to law, and due notice of presentation and filing the said petition and bond having been given to the plaintiff, and the parties appearing by their respective counsel, and the Court being fully advised in the premises,—

IT IS HEREBY ORDERED that this Court does hereby accept and approve said bond and accept said petition and does order that this cause be removed from this court to the District Court of the United States for the Western District of Washington, Northern Division, pursuant to the statutes of the United States relative thereto, and that all other proceedings in this court be stayed.

Done in open court this 4th day of October, 1924.

MITCHELL GILLIAM,

Judge.

Copy of within order received and service of the same acknowledged this 1st day of October, 1924.

WRIGHT & WRIGHT,
Attorneys for Pltf.

Filed in County Clerk's Office, King County, Wash. Oct. 4, 1924. George A. Grant, Clerk. By A. L. Lawrence, Deputy.

[Endorsed]: Oct. 27, 1924. [6]

[Title of Court and Cause.]

ANSWER.

Comes now the above-named defendant and for answer to plaintiff's complaint herein admits, denies and alleges:

I.

Defendant admits the allegations contained in Paragraph II, of plaintiff's complaint.

II.

Defendant denies each and every allegation contained in Paragraph III, IV and V of plaintiff's complaint.

III.

Defendant denies any knowledge or information sufficient to form a belief as to the allegations contained in Paragraph VI of plaintiff's complaint and therefore denies the same.

IV.

Defendant denies each and every allegation contained in Paragraphs VII, VIII and IX of plaintiff's complaint, except that it is admitted that said plaintiff, through his attorneys, Wright and Wright, mailed to one E. R. Vorhies a check in the sum of Five Hundred Dollars (\$500.00) and alleges that said Vorhies thereafter returned said check to the plaintiff through his said [7] attorneys; it is admitted that defendant has denied and still denies that there was any oral contract or contract of any kind of insurance as alleged in plaintiff's complaint or at all and denies that it still retains or ever received the premium for insurance which the plaintiff alleges that he paid.

V.

Answering Paragraph X of plaintiff's complaint this defendant denies that there was any oral contract as therein alleged or at all; denies that there is Ten Thousand Dollars (\$10,000) due or owing to the plaintiff or any other sum whatsoever; defendant admits that it refuses to pay the plaintiff Ten Thousand Dollars (\$10,000) or any other sum on account of any alleged or pretended oral insurance contract.

FOR A FURTHER SEPARATE DEFENSE
THIS DEFENDANT ALLEGES:

I.

That the fire mentioned in plaintiff's complaint and the damage resulting therefrom, if any, was procured and caused by the willful and malicious

act of the plaintiff in setting or causing said fire to be started for the purpose and in an attempt to defraud this defendant and other insurance companies by seeking to compel defendant and others to pay to the plaintiff fire insurance for alleged damage done by reason of such fire.

WHEREFORE, defendant prays that plaintiff take nothing by reason of his complaint and that said action be dismissed with costs to this defendant.

FRED G. CLARKE,
BATTLE, HULBERT, GATES & HEL-
SELL,

Attorneys for Defendant. [8]

State of Washington,
County of King,—ss.

Evert Lamping, being first duly sworn, on oath deposes and says: That he is the President and Manager of Lamping & Company, a corporation, agent of the defendant insurance company, and makes this verification by authority for and in its behalf; that he has read the foregoing answer, knows the contents thereof and believes the same to be true.

EVART LAMPING.

Subscribed and sworn to before me this 20th day of November, 1924.

[Seal] SHIRLEY F. HARWOOD,

Notary Public in and for the State of Washington,
Residing at Seattle.

Copy rec'd Nov. 21, 1924.

WRIGHT & WRIGHT,
Attys. for Plaintiff.

[Endorsed]: Filed Nov. 21, 1924. [9]

[Title of Court and Cause.]

REPLY.

Comes now the plaintiff and by way of reply to the alleged further separate defense of the defendant, says:

I.

He denies Paragraph I of the said so-called separate defense, and each and every part thereof.

WHEREFORE, having fully replied, plaintiff prays as by his complaint herein on file.

WRIGHT & WRIGHT,
Attorneys for Plaintiff. [10]

United States of America,
State of Washington,
County of King,—ss.

W. A. Milligan, being first duly sworn, on his oath deposed and says: That he is the plaintiff named in the above-entitled action; that he has read the above and foregoing reply, knows the contents thereof, and that the same is true.

W. A. MILLIGAN.

Subscribed and sworn to before me this 21st day of November, 1924.

[Seal] SAM A. WRIGHT,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Receipt of a copy of the within reply and due service admitted this 24 day of Nov., 1924.

BATTLE, HULBERT, GATES & HEL-
SELL,

Attorneys for Deft.

Filed Nov. 24, 1924. [11]

[Title of Court and Cause.]

VERDICT.

We, the jury in the above-entitled cause, find for the plaintiff, and assess his recovery in the sum of Ten Thousand & no/100 Dol. (\$10,000.00) Dollars.

A. H. BRACKETT,
Foreman.

[Endorsed]: Filed Jun. 3, 1925. [12]

In the District Court of the United States, Western
District of Washington, Northern Division.

No. 8952.

W. A. MILLIGAN,

Plaintiff,

vs.

NATIONAL LIBERTY INSURANCE COM-
PANY OF AMERICA, a Corporation,
Defendant.

JUDGMENT.

BE IT REMEMBERED that the above-entitled matter came on regularly for trial before the undersigned Judge of the above-entitled court sitting with a jury of twelve jurors regularly chosen and selected in the manner as provided by law, on the 3d day of June, 1925. The plaintiff at said time appearing in person with his witnesses and through his attorneys of record herein, Elias A. Wright, and Sam A. Wright, and the defendant appearing with its witnesses, and through its attorneys of record, R. A. Hulbert, of the firm of Battle, Hulbert, Gates and Helsell, and Fred G. Clarke, whereupon a trial was had, the jury being duly and regularly selected to try the cause, and evidence having been introduced by the respective parties herein and the cause having been argued to the jury by respective counsel for both parties, and the jury having been duly instructed as to the law by the Court, and hav-

ing thereupon retired to deliberate upon its verdict, and having deliberated thereupon, returned into open court on June 3, 1925, with its verdict in due and regular form, in which verdict the said jury found in favor of the plaintiff, and against the defendant in the full sum of \$10,000.00, and the said verdict having been duly received by the Court and filed herein, and the attorneys of record for the plaintiff now in open court, having moved for the entry of a judgment upon said verdict, and the Court being fully advised in the premises, it is hereby [13]

ORDERED, ADJUDGED and DECREED that in pursuance of said verdict so rendered, the plaintiff do have and recover a judgment against the defendant in the above-entitled action, in the full sum of \$10,000.00 together with interest thereon, at the rate of 6% per annum from August 19, 1924, together with his costs and disbursements in the sum of \$327.35, to be taxed, by the Clerk of this court, in the manner as provided by law, and when so taxed to become a part of this judgment, and it is further

ORDERED, ADJUDGED and DECREED that the plaintiff may have immediate execution therefor.

Done in open court this 15 day of June, 1925.

BOURQUIN,

Judge.

[Endorsed]: Filed Jun. 15, 1925. [14]

[Title of Court and Cause.]

MOTION FOR NEW TRIAL.

Now comes defendant by its counsel and moves the Court to set aside the verdict of the jury heretofore rendered herein and to grant a new trial in this cause for the following reasons:

I.

That the evidence in the case is insufficient to justify the verdict against the defendant.

II.

That the verdict is contrary to and against the law.

III.

The Court gave improper instructions to the jury.

IV.

The Court improperly denied the defendant's motion for preemptory instructions at the close of all of the evidence and refused to give to the jury the preemptory instructions offered by the defendant.

V.

The Court erred in denying the defendant's challenge to the sufficiency of the evidence and direct a verdict in favor of the defendant or withdraw the case from the jury and enter [15] judgment in favor of the defendant at the close of all of the evidence in the case.

VI.

The Court erred in refusing to consider the defendant's challenge to the sufficiency of the evi-

dence at the close of all of the evidence in the case and denying defendant's said challenge upon the ground that no demurrer had been interposed to the complaint which showed that the action was one upon an alleged oral contract of fire insurance.

VII.

The Court erred in instructing the jury that an oral contract of fire insurance is valid in the State of Washington.

VIII.

The Court erred in its instruction to the jury that E. R. Vorhies, the alleged agent of the defendant company, had authority to bind the defendant company on an oral contract of fire insurance; and that an oral contract of fire insurance made by the alleged agent was enforceable against the defendant company.

IX.

The Court erred in admitting incompetent, irrelevant, immaterial and improper evidence offered in behalf of the plaintiff over the objections and exceptions of defendant duly made at the time.

X.

Because under the pleadings and all of the evidence in the case, the verdict should have been in favor of the defendant.

BATTLE, HULBERT, GATES & HEL-
SELL,

FRED G. CLARKE,
Attorneys for Defendant.

Copy received.

WRIGHT & WRIGHT,
By E. AYERST.

[Endorsed]: Filed Jun. 5, 1925. [16]

[Title of Court and Cause.]

OPINION AND ORDER OVERRULING MOTION FOR NEW TRIAL.

Plaintiff sued upon an oral contract of fire insurance for one year. The proof is of an agreement to insure, effective from time made, which was to be but was not reduced to writing; and so, is presumed to be a contract of usual or statutory conditions and form. That is to say, the agreement so far as instant effect is concerned, is analogous to the usual binding slip or receipt. In this is no material if any variance. As in case of any like contract, it could be declared upon as oral. The complaint disclosed that the contract is oral, and without any preceding challenge of its sufficiency, the case occupied the larger part of the day of judge and jury in its trial. At the conclusion of the evidence, the defendant moved for a directed verdict upon the ground that the contract is void for that oral insurance is prohibited by the local law. The practice is not tolerable (*U. S. vs. Herzig*, 204 Fed. 125), and the motion was denied. The verdict for plaintiff. On the same ground, the only one urged, defendant moves for a new trial.

Denied. That oral contracts of insurance, like this at bar are not void by reason of local statutes, is supported by principle and great weight of authority. See

Kittler case, 126 Wash. 478;

Way case, 74 Wash. 332;

Relief case, 94 U. S. 574.

It is the rule of contracts and statutes in general. The common law right to orally contract or insure is not abrogated by [17] statute farther than the statutory language requires. If the legislature had intended oral contracts of insurance to be void, it could have easily and plainly said so. So far as the agent's authority went, see *Schumacher vs. Ins. Co.*, 2 Fed. (Ind.) 510, and its citation of the Sup. Ct. Any limitation upon his power to affect all lawful insurance, was not brought to plaintiff's knowledge.

BOURQUIN, J.

June 16, 1925.

[Endorsed:] Filed Jun. 16, 1925. [18]

[Title of Court and Cause.]

TIME GRANTED TO FILE BILL OF EXCEPTIONS.

Now on this 12th day of June, 1925, both sides being represented by counsel, on motion of defendant both sides are granted ten days from and after the Court's disposition of the motion for a new trial

herein in which to serve and lodge proposed bill of exceptions.

Journal #13, at page 394. [19]

[Title of Court and Cause.]

DEFENDANT'S PROPOSED BILL OF EX-
CEPTIONS.

BATTLE, HULBERT, GATES & HEL-
SELL,

ROBT. A. HULBERT,
FRED G. CLARKE,

Attorneys for Defendant. [20]

[Title of Court and Cause.]

DEFENDANT'S PROPOSED BILL OF EX-
CEPTIONS.

FIRST EXCEPTION.

BE IT REMEMBERED that the above-entitled and numbered cause came on for trial before the Honorable George M. Bourquin, one of the Judges of the United States District Court, sitting in the above-entitled court at the Federal Building, in the City of Seattle, State of Washington, at the hour of 10 o'clock A. M., June 3, 1925; the plaintiff appearing by his attorneys Messrs. Wright and Wright, and the defendant appearing by its attorneys, Messrs. Battle, Hulbert, Gates & Helsell and Mr. Fred G. Clarke, both sides having announced that they were ready for trial, a jury was duly and regularly impaneled to try said cause, and at the

close of all of the evidence and prior to the submission of the case to the jury, the defendant challenged the sufficiency of the evidence to sustain a verdict for the plaintiff and asked the Court to direct a verdict in favor of the defendant under the statutes of this state or withdraw the case from the jury and enter judgment for the defendant, for the reason that the evidence is wholly insufficient to support any verdict or [21] judgment in favor of the plaintiff against the defendant, and particularly upon ground that under the statute and the law of this state, an oral contract of fire insurance is not valid and cannot be enforced. In other words, that fire insurance must be in writing on the standard form. Upon the further ground that an agent created by the statute is only authorized to do those things the statute delegates or gives him the power to do, and right to do, and his right and power are clearly for the purpose of soliciting and effecting insurance in the manner provided by the statute, namely the granting or issuing of policies countersigned by himself as agent, on the statutory form.

Such request and motion of the defendant were denied by the court and to the denial thereof, the defendant duly excepted and its exception was allowed.

The defendant submits the following stenographic report of the trial herein, consisting of pages 3 to 99, inclusive, which is all the evidence and testimony introduced upon the trial of said cause, together with all objections and exceptions made and taken to the admission or exclusion of testimony

and all motions, offers to prove and admissions and rulings thereon, together with all exhibits, being Plaintiff's Exhibits 1 to 10, inclusive, and Defendant's Exhibits "A" to "E," inclusive, referred to and received in evidence as a bill of exceptions in support of said first exception. [22]

TESTIMONY OF H. O. FISHBACK, FOR
PLAINTIFF.

H. O. FISHBACK, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By SAM A. WRIGHT.)

Q. Please state your name.

A. H. O. Fishback.

Q. What is your official connection with the State of Washington?

A. I am State Insurance Commissioner.

Q. And how long have you been such?

A. Since January, 1913.

Q. You live at Olympia, of course?

A. Yes, sir.

Q. At my request have you produced certain of your records in reference to the authorization of the National Liberty Insurance Company of America to do business in this State and the appointment of some of their agents? A. I have them here.

Q. Have you with you the certificate of authority issued—

(Testimony of H. O. Fishback.)

Mr. HULBERT.—We will admit, to save time, that the National Liberty Insurance Company of America was authorized to do business in this State.

The COURT.—Very well.

SAM A. WRIGHT.—In this kind of insurance?

Mr. HULBERT.—What do you mean by that?

Mr. SAM A. WRIGHT.—Fire insurance. [23]

Mr. HULBERT.—Fire insurance.

Q. (Mr. SAM A. WRIGHT.) Have you, Mr. Fishback, the certificate of appointment by the National Liberty Insurance Company of America of Hilbert A. Clark as the manager of the Western Department of that company? A. Yes, sir.

Q. That certificate of appointment is on file in your office? A. Yes, sir.

Q. Handing you Plaintiff's Exhibit "1," is that a certified copy of that appointment?

Mr. HULBERT.—We admit that the company is authorized to do a fire insurance company business in and under the laws of the State of Washington.

Mr. SAM A. WRIGHT.—You deny the agency of Mr. Voorhees, and this is a matter leading up to that.

The COURT.—Very well. It shows for itself.

Mr. HULBERT.—We do not deny that he was appointed agent, but we do deny that he was authorized to write the contract of insurance claimed in this case.

Q. (Mr. SAM A. WRIGHT.) Have you the agent's authorization signed by Hilbert A. Clark

dated April 7th, 1923?

The COURT.—Are you proposing to produce a certified copy of it?

Mr. SAM A. WRIGHT.—Yes.

The COURT.—Then just offer the instrument.
[24]

Mr. SAM A. WRIGHT.—I will offer in evidence a certified copy of a requisition and request for the issuance of an agent's license upon the requisition of Lamping & Company, a request by Hilbert A. Clark to honor requisitions for agent's license upon the request of Lamping & Company, general agents of this defendant company.

The COURT.—And who is Mr. Clark?

Mr. SAM A. WRIGHT.—Mr. Clark is the manager of the Western District of this Department as shown by the Plaintiff's Exhibit "1."

The COURT.—Manager of this district for whom?

Mr. SAM A. WRIGHT.—For the defendant company in this state. I will offer it in evidence and also offer in evidence a duly certified copy of the appointment of Lamping & Company as general agents for the defendant company for the State of Washington. I will offer in evidence a duly certified copy of a requisition for, and a list of applications for the renewal of agents' licenses dated March 21, 1924, of the National Liberty Insurance Company under the request and upon the application of Lamping & Company, which shows the request for the appointment of E. R. Voorhees as

agent for the defendant company. I will also offer in evidence a duly certified copy of Edward R. Voorhees' insurance agent's license for this defendant, dated April 15, 1924, being for a [25] period up to and including March 31, 1925.

Mr. HULBERT.—We have no objection.

The COURT.—They will be admitted.

(Documents above referred to admitted in evidence as Plaintiff's Exhibits 1, 2, 3, 4 and 5 respectively.)

PLAINTIFF'S EXHIBIT No. 1.

#8952. Plffs. Exhibit 1. Admitted.

No. 1187.

STATE OF WASHINGTON,

Department of Insurance,

Olympia.

I, H. O. FISHBACK, State Insurance Commissioner, do hereby certify that I am the state official charged with the general control and supervision of all insurance business (except State Workmen's Compensation) transacted in the State of Washington and charged with the administration of the laws relating to insurance in said jurisdiction, and that this office is a department of record, having the custody of original documents.

I FURTHER CERTIFY, That the within and annexed document is a full, true and correct copy of the appointment of HERBERT A. CLARK, of

Chicago, Illinois, as Manager of the Western Division of the NATIONAL LIBERTY INSURANCE COMPANY OF AMERICA, of New York, New York, as the same appears on file with this Department.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Insurance Department of the State of Washington, this 21st day of January, 1925.

[Seal]

H. O. FISHBACK,
State Insurance Commissioner.

By _____,
Deputy Commissioner.

APPOINTMENT OF GENERAL AGENT

for

State of Washington.

KNOW ALL MEN BY THESE PRESENTS, That the National Liberty Insurance Company of America, a corporation, organized under the laws of the State of New York, and being authorized to, or proposing to be authorized to carry on the business of insurance in the State of Washington, has constituted and appointed, and by these presents does constitute and appoint Herbert A. Clark, Manager Western Department of Chicago, State of Illinois, its General Agent and/or Manager for the State of Washington. Giving and granting unto the said Herbert A. Clark, the powers to act as General Agent and/or Manager for said company, and

in its name, place and stead, to receive on behalf of said company, from the Insurance Commissioner of the State of Washington, any and all copies of process served upon such Insurance Commissioner in proceedings or actions brought against said company in the State of Washington, and in its name to file and/or adopt rates as required by the laws of the State of Washington, and to do and perform all acts in the execution and prosecution of the business of said National Liberty Insurance Company, in the State of Washington, in as full and ample a manner as the said Company might itself do.

IN WITNESS WHEREOF, The National Liberty Insurance Company of America, by resolution of its Board of Directors, duly made and passed at a regularly called meeting thereof, and/or as provided by its by-laws, has caused these presents to be subscribed and its corporate name and seal to be affixed hereto, this twelfth day of September, 1923.

NATIONAL LIBERTY INSURANCE
COMPANY.

By CHAS. H. COATES,
President.

Attest: WM. G. ARMSTRONG,
Secretary.

[Corporate Seal]

“National Liberty Insurance Company of
America.”

25¢ Revenue Stamp. Canceled.

A fee of \$1.00 is required for filing this document. Attach and cancel 25¢ Revenue Stamp.

Filed in the Office of the Insurance Commissioner of the State of Washington, Sept. 24, 1923, at — o'clock —. H. O. Fishback, Commissioner. By H.

No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monekton, Clerk.

PLAINTIFF'S EXHIBIT No. 2.

#8952. Plffs. Exhibit 2. Admitted.

No. 1188.

STATE OF WASHINGTON,

Department of Insurance,

Olympia.

I, H. O. FISHBACK, State Insurance Commissioner, do hereby certify that I am the state official charged with the general control and supervision of all insurance business (except State Workmen's Compensation) transacted in the State of Washington and charged with the administration of the laws relating to insurance in said jurisdiction, and that this office is a department of record, having the custody of original documents.

I FURTHER CERTIFY, That the within and annexed document is a full, true and correct copy of the appointment of LAMPING AND COMPANY, Inc., of Seattle, Washington, as General Agents to request licenses for the NATIONAL

LIBERTY INSURANCE COMPANY OF AMERICA, of New York, New York, (Washington Underwriters Department), as the same appears on file with this Department.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Insurance Department of the State of Washington, this 21st day of January, 1925.

[Seal]

H. O. FISHBACK,
State Insurance Commissioner.

By _____,
Deputy Commissioner.

NATION LIBERTY (WASHINGTON UNDER-
WRITERS).

(Name of Company)

April 27, 1923.

Insurance Commissioner,
State of Washington,
Olympia.

Dear Sir:

Please honor requisitions for Agent's Licenses on behalf of this Company, applied for in the name of the Company by Lamping & Company, Inc., General Agents, with headquarters at Colman Bldg., Title of Office

Seattle, State of Washington, and oblige,

Yours truly,

[Seal]

H. A. CLARK,
Manager.

Received Insurance Department May 11, 1923.
H. O. Fishback, Commissioner.

No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

PLAINTIFF'S EXHIBIT No. 3.

#8952. Plffs. Exhibit 3. Admitted.

No. 1186.

STATE OF WASHINGTON,

Department of Insurance,

Olympia.

I, H. O. FISHBACK, State Insurance Commissioner, do hereby certify that I am the state official charged with the general control and supervision of all insurance business (except State Workmen's Compensation) transacted in the State of Washington and charged with the administration of the laws relating to insurance in said jurisdiction, and that this office is a department of record, having the custody of original documents.

I FURTHER CERTIFY, That the within and annexed document is a full, true and correct copy of the appointment of LAMPING AND COMPANY, Inc. of Seattle, Washington, as General Agents for the NATIONAL LIBERTY INSURANCE COMPANY OF AMERICA, of New York, New York, as the same appears on file with this Department.

IN WITNESS WHEREOF, I have hereunto set by hand and affixed the official seal of the Insurance

Department of the State of Washington, this 21st day of January, 1925.

[Seal]

H. O. FISHBACK,
State Insurance Commissioner.

By _____,
Deputy Commissioner.

APPOINTMENT OF GENERAL AGENT

for

State of Washington.

KNOW ALL MEN BY THESE PRESENTS, That the NATIONAL LIBERTY INSURANCE COMPANY OF AMERICA, a corporation, organized under the laws of the State of New York, and being authorized to, or proposing to be authorized to carry on the business of insurance in the State of Washington, has constituted and appointed, and by these presents does constitute and appoint Lamping & Company, Inc., whose street address is Colman Building, of Seattle, State of Washington, its General Agent and/or Manager for the State of Washington. Giving and granting unto the said LAMPING & COMPANY, Inc., the powers to act as General Agent and/or Manager for said company, and in its name, place and stead, to receive on behalf of said company, from the Insurance Commissioner of the State of Washington, any and all copies of process served upon such Insurance Commissioner in proceedings or actions brought against said company in the State of Washington, and in its name to file and/or adopt rates

as required by the laws of the State of Washington, and to do and perform all acts in the execution and prosecution of the business of said National Liberty Insurance Company, in the State of Washington, in as full and ample a manner as the said Company might itself do.

IN WITNESS WHEREOF, The NATIONAL LIBERTY INSURANCE COMPANY OF AMERICA, by resolution of its Board of Directors, duly made and passed at a regularly called meeting thereof, and/or as provided by its by-laws, has caused these presents to be subscribed and its corporate name and seal to be affixed hereto, this 24 day of March, 1924.

NATIONAL LIBERTY INS. COMPANY
OF AMERICA.

By GUSTAV KEHR,
President.

Attest: LOUIS PFINGSTAG,
Secretary.

[Corporate Seal]

“National Liberty Insurance Company of
America.”

25¢ Revenue Stamp. Canceled.

A fee of \$1.00 is required for filing this document.
Attach and cancel 25¢ Revenue Stamp.

Filed in the Office of the Insurance Commissioner
of the State of Washington, Sept. 19, 1924, at —
o'clock, —M. H. O. Fishback, Commissioner.
By H.

No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

PLAINTIFF'S EXHIBIT No. 4.

8952. Plffs. Exhibit 4. Admitted.

No. 1189.

STATE OF WASHINGTON,

Department of Insurance.

Olympia.

I, H. O. FISHBACK, State Insurance Commissioner, do hereby certify that I am the state official charged with the general control and supervision of all insurance business (except State Workmen's Compensation) transacted in the State of Washington and charged with the administration of the laws relating to insurance in said jurisdiction, and that this office is a department of record, having the custody of original documents.

I FURTHER CERTIFY, That the within and annexed document is a full, true and correct copy of the list of applications for renewal of agent's licenses dated March 21, 1924, of the NATIONAL LIBERTY FIRE INSURANCE COMPANY, (Washington Underwriters) of New York, New York, as the same appears on file with this Department.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the In-

Insurance Department of the State of Washington,
this 21st day of January, 1925.

[Seal]

H. O. FISHBACK,
State Insurance Commissioner.

By _____,
Deputy Commissioner,

Application for Renewal of Agents' Licenses

DO NOT use this blank except in making application for the renewal of licenses which are now in force. Do not include any names of persons applying for new licenses but use the smaller blank for such purpose. All agents' licenses expire on the 31st day of March of each year unless sooner revoked.

To the Insurance Commissioner of the State of Washington:

Dated Mar. 21, 1924.

This application is made for the purpose of procuring Renewal Certificates authorizing the persons named in the following schedule to act as agents for National Liberty Fire Insurance (Washington Underwriters) Company in the State of Washington for the year ending March 31, 1925.

They were all duly licensed during 1923 under the Insurance Laws of the State of Washington, and we request that Renewal licenses be granted.

Date Filed _____

Date Issued _____

Number of Agents 23

(Washington Underwriters)

National Liberty Fire Insurance Company _____ Company

By Lamping & Co. Gen. Agts.

This application must be signed either by the members of the Company, or by the manager or agent having authority on record with the Commissioner. The name of each and every individual member comprising a firm, and the names of the executive officers of a corporation, must be given.

ISSUED
 APR 12 1924

Do not write in this column	NAME OF AGENT (Individual, Firm or Corporation) <small>Allow double space between agencies</small>	Individual Names of Members of Firm and Executive Officers of Corporation	PLACE OF RESIDENCE	COUNTY
10166	C. Murray 488-24		Aberdeen	Grays Harbor
10167	Edmond C. Rudholm		Burlington	Skagit
10168	Bacon & Elle	J. H. Bacon & H. H. Elle	Bellingham	Whatcom
10169	L. Stowers		Chehalis	Lewis
10170	James W. Dow		Chewelah	Stevens
10171	Halvor Quam		Everett	Snohomish
10172	S. S. Hesbit		Ellensburg	Kittitas
10173	S. G. Leach		Garfield	Whitman
10174	Hinton Finance Company	J. A. Hinton	Hoquiam	Grays Harbor
10175	Edward R. Voorhies		Norton	Lewis
10176	Frank C. Johnson		Mount Vernon	Skagit
10177	H. J. Erickson		Port Angeles	Clallam
10178	Curt J. Murphy		Snohomish Arlington	Snohomish
10179	Hahn & Kent 202-24	I. Lloyd Hahn H. O. Kent 202-24	Spokane	Spokane
10180	Washington Trust Company	L. H. Stanton, Fred J. Blomberg Fred L. Stanton, O. M. Anderson M. B. Connelly, F. J. Gues	Spokane	Spokane
10181	Marion K. Norton & Co.	L. K. Norton	Tacoma	Pierce
10182	H. T. Arnold		Vancouver	Clarke
10183	William Mackie		Waterville	Douglas
10184	George Retzer		Walla Walla	Walla Walla
10185	John F. Burton		Wentchee	Chelan
10187	Liberty Savings & Loan Ass'n	F. M. Raymond, Wm. T. Hines W. K. Buck, D. C. Reed	Yakima	Yakima
10188	The Brown-Hart Agency	J. H. Brown-R. Franklin Hart	Olympia	Thurston
10186	Lamping & Company, Inc	Ewart Lamping, Mary & T Lamping	Seattle 1	King

76 GENERAL AGENT

10166-10188-23
2
4000

10166 2205



No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

PLAINTIFF'S EXHIBIT No. 5.

8952. Plffs. Exhibit 5. Admitted.

STATE OF WASHINGTON,

Department of Insurance.

Olympia.

I, H. O. FISHBACK, State Insurance Commissioner, do hereby certify that I am the state official charged with the general control and supervision of all insurance business (except State Workmen's Compensation) transacted in the State of Washington and charged with the administration of the laws relating to insurance in said jurisdiction, and that this office is a department of record, having the custody of original documents.

I FURTHER CERTIFY, That the within and annexed document is a full, true and correct copy of the Insurance Agent's License issued by this Department to EDWARD R. VOORHIES of Morton, Washington, on April 15, 1924, to represent the NATIONAL LIBERTY FIRE INSURANCE COMPANY, through the WASHINGTON UNDERWRITERS of New York, for the period ending March 31, 1925, as the same appears on file with this Department.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the In-

Insurance Department of the State of Washington,
this 21st day of January, 1925.

[Seal]

H. O. FISHBACK,
State Insurance Commissioner.

By _____,
Deputy Commissioner,

STATE OF WASHINGTON—DEPARTMENT
OF INSURANCE.

Fee \$2.00

No. 18175

INSURANCE AGENT'S LICENSE.

Olympia, April 15, 1924.

This certifies, that EDWARD R. VOORHIES, MORTON, a resident of the State of Washington, and a duly appointed agent of the NATIONAL LIBERTY FIRE INSURANCE CO. (WASH. UNDWS.), NEW YORK, is hereby authorized and licensed to solicit and procure insurance to be written by said company in the classes enumerated in its certificate of authority, within the jurisdiction of the State of Washington and pursuant to the Insurance Code as amended and in force during the continuance of this license. The authority granted hereunder shall continue to March 31st, 1925, unless previously cancelled.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Insurance Department of the State of Washington.

H. O. FISHBACK,
Insurance Commissioner.

By _____,
Deputy Commissioner,

(Testimony of James A. O'Neil.)

No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

(Witness excused.)

TESTIMONY OF JAMES A. O'NEIL, FOR
PLAINTIFF.

JAMES A. O'NEIL, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SAM A. WRIGHT.)

Q. What is your name, please?

A. James A. O'Neil.

Q. Where do you live? A. In Tacoma.

Q. What is your business?

A. I am vice-president of the Pacific Savings & Loan [26] Association.

Q. How long have you been connected with that Company? A. About six years ago.

Q. And the business of the Pacific Savings & Loan Association is what?

A. A regular Savings & Loan business.

Q. And does that firm make loans on different kinds of property? A. Yes, sir.

Q. Are you familiar with the Morton Hotel, or were you familiar with the Morton Hotel at Morton, Washington, before its destruction by fire?

A. Yes, sir, I appraised it.

Q. State whether or not your company had oc-

(Testimony of James A. O'Neil.)

casation to make a loan on that building and upon that property.

Mr. HULBERT.—I object to that as being wholly incompetent and immaterial.

M. SAM A. WRIGHT.—I am laying the foundation to prove the value of this property.

The COURT.—He may answer "Yes," or "No."

A. Yes.

Q. (Mr. SAM A. WRIGHT.) Did you have occasion to inspect and view and to appraise that property? A. Yes, sir.

Q. When was that?

A. In March, 1924, I think, to the best of my recollection.

Q. As a result of that inspection and appraisalment that you made, did you become familiar with the value of that building? A. Yes, sir. [27]

Q. What was the value of that building, Mr. O'Neil, at the time you made the appraisal?

Mr. HULBERT.—I object to that as wholly incompetent and immaterial.

The COURT.—Is there any question raised on that in the pleadings?

Mr. SAM A. WRIGHT.—They deny the loss entirely and the amount of it, and I assume that they question the value.

The COURT.—The objection is overruled.

A. Twenty thousand dollars.

Q. Was that without any improvement?

A. That was without improvements.

Q. Were there any improvements made upon that

(Testimony of James A. O'Neil.)

building as a result of the loan that you made and as a condition of the loan?

A. The condition in making the loan was that \$5000 was to be spent on the building.

Q. Was that spent on the building?

A. To the best of my knowledge it was.

Mr. SAM A. WRIGHT.—You may cross-examine.

Mr. HULBERT.—No questions.

(Witness excused.) [28]

TESTIMONY OF W. A. MILLIGAN, IN HIS OWN BEHALF.

W. A. MILLIGAN, plaintiff, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SAM A. WRIGHT.)

Q. Your name is W. A. Milligan? A. Yes.

Q. You are the plaintiff in this case?

A. Yes, sir.

Q. Where do you live?

A. On 19th Northeast, Seattle.

Q. What is your business at this time?

A. Real estate.

Q. How long have you been in such business?

A. About 9 months.

Q. What was your business prior to that time?

A. The hotel business.

Q. And how long were you in the hotel business?

A. I have been in it about 3 years.

(Testimony of W. A. Milligan.)

Q. And did you formerly own the Morton Hotel property at Morton, Washington? A. I did.

Q. And when did you become the owner of that property?

A. In the latter part of May, 1924.

Q. Did you get a deed of conveyance on it at that time? A. I did.

Mr. SAM A. WRIGHT.—Do you raise any question about the ownership of the property? [29]

Mr. HULBERT.—No, we haven't raised any such question.

Mr. SAM A. WRIGHT.—I understand the plaintiff's ownership of this property is admitted.

Mr. HULBERT.—No. We do not make any claim on that.

The COURT.—Then there is no use to admit documents or facts that are already admitted.

Q. (Mr. SAM A. WRIGHT.) When did you take possession of that property?

A. On May 30, 1924.

Q. Are you acquainted with a man named E. R. Voorhees, at Morton? A. Yes, sir.

Q. When did you meet him?

A. I met him May 30, 1924.

Q. Did you subsequently have any dealings with him? A. I did.

Q. What was his business?

A. Insurance agent.

Q. What company is he agent for?

A. He was—

Mr. HULBERT.—I submit he has not shown

(Testimony of W. A. Milligan.)

himself qualified to testify to what companies Mr. Voorhees represented.

The COURT.—The objection is sustained. You have proof of Mr. Voorhees's agency, as far as that is concerned.

Q. (Mr. SAM A. WRIGHT.) Did you have any business dealings then with Mr. Voorhees after you arived at Morton? [30]

A. Yes, sir.

Q. When was that?

A. I arrived at Morton about 4:30 and one of the first persons that I met there was Mr. Voorhees. He came up and introduced himself to me.

Mr. HULBERT.—I object to that.

The COURT.—Read the question.

(Last question read.)

The COURT.—(Continuing.) Answer briefly when it was.

Q. (Mr. SAM A. WRIGHT.) When was your deal with him in reference to insurance, made?

A. The 31st day of May.

Q. Of last year? A. Yes, sir.

Q. And what was that?

Mr. HULBERT.—I object to that unless it pertains to this transaction.

Mr. SAM A. WRIGHT.—The purpose of this testimony is to show the previous dealings.

The COURT.—He may state briefly, but we do not want all the infinite details. If he procured insurance from him at that time and place, he may answer. The objection is overruled.

(Testimony of W. A. Milligan.)

A. He came in and told me a policy was expiring the next day at noon on the hotel.

The COURT.—You were just asked what business you did with him.

A. I gave him some insurance for \$1,200.

Q. (Mr. SAM A. WRIGHT.) Was a policy of insurance subsequently [31] delivered to you on that? A. Yes, sir.

Q. Handing you Plaintiff's Exhibit 7 for Identification, I will ask you to state whether or not that is the policy that— A. Yes, sir.

Mr. HULBERT.—I object to that as having nothing to do with the oral contract of insurance alleged in this case.

The COURT.—It is preliminary. The objection is overruled.

Mr. SAM A. WRIGHT.—I will offer it in evidence.

Mr. HULBERT.—I object to it as being wholly incompetent and immaterial.

The COURT.—On this particular building?

Mr. SAM A. WRIGHT.—Yes.

Mr. HULBERT.—It is not on the building at all.

Mr. SAM A. WRIGHT.—It is on the contents of that building.

The COURT.—The objection is overruled.

PLAINTIFF'S EXHIBIT No. 7.

8952. Plffs. Exhibit 7. Admitted.

No. 50419

STANDARD FIRE INSURANCE POLICY

STOCK COMPANY

WASHINGTON

UNDERWRITERS

By This Policy of Insurance

the

NATIONAL LIBERTY INSURANCE CO. OF
AMERICA

Amount \$1200.00 Rate 5.00 Premium \$60.00

In Consideration of the Stipulations herein named
and of

SIXTY and No/100 Dollars Premium,

does insure W. A. MILLIGAN for the term of One
Year from the First day of June, 1924, at noon,
(Standard Time) to the First day of June, 1925, at
noon, (Standard Time) against all direct loss or
damage by fire, except as hereinafter provided, to
an amount not exceeding TWELVE HUNDRED
and No/100 Dollars, to the following described
property while located and contained as described
herein, and not elsewhere, to wit:

Standard Forms Bureau Form 291

HOTEL, APARTMENT, BOARDING AND
LODGING HOUSE FORM
(BUILDING AND FURNITURE AND FIX-
TURES)

On the following described property, all situate facing east on Second Street, MORTON, WASHINGTON.

(Fire Map Block 13, Nos. 37-38-39)

\$Nil On the XX story XX roof XX building, and its additions (if any) of like construction communicating and in contact therewith, including foundations, sidewalks, plumbing, electrical wiring and stationary heating and lighting apparatus and fixtures; also all permanent fixtures, awnings, wall and ceiling decorations and frescoes, stationary scales and elevators, belonging to and constituting a part of said building, only while occupied for Hotel purposes.

*2. \$1200.00 On hotel or apartment or boarding or lodging house furniture, fixtures and furnishing material, useful and ornamental; musical instruments; mirrors, pictures, paintings, engravings and their frames; silver and plated ware, crockery, glassware and cutlery; supplies, provisions and fuel; laundry machinery and ap-

article or piece of personal property separately insured for a specific amount under this, or any other policy, is covered by this policy except for such specific amount, if any, named herein; nor shall this company be liable for loss to property of others for which the insured is liable by law or shall have specifically assumed liability, on which insurance is carried by or in the name of others than the insured named in this policy.

“Sidewalk Clause.” It is understood that property above described is also covered under its respective items, on sidewalks, platforms and alleyways pertaining to above described building, only while in daily transit to and from said building.

Other insurance permitted.

Loss, if any, subject however to all the terms and conditions of this policy, payable to S. J. BERGEN, as his interest may appear.

The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. 50419 of the Washington Underwriters of the National Liberty Insurance Co. of America.

Agency at Morton, Washington. Dated June 1, 1924.

E. R. VOORHIES,
Agent.

Trade Mark
Standard

291

July 1917

Insurance Map

Sheet

Block

No.

For Other Provisions See Reverse Side of This
Rider

Provisions Referred to in and Made part of this
Rider (No. 291)

“Permits.” Permission granted to make alteration or repairs to the above described building without limit of time, and to build additions, and if of like construction and communicating and in contact therewith, this policy shall cover on or in same under its respective items pertaining thereto; permission also granted to do such work in said building as the nature of the occupancy may require; to work at any and all times; and, when not in violation of law or ordinance, to generate illuminating gas or vapor, and to keep and use the necessary quantities of all articles, things and materials incidental to the business conducted therein and for the operation of said building, it being warranted by insured that no artificial light (other than incandescent electric light) be permitted in the room when the reservoir of any machine or device using petroleum or any of its products of greater inflammability than kerosene oil is being filled or drawn on. A breach of this warranty suspends this insurance during such breach. But notwithstanding anything herein contained, the use, keeping, allowing, or storing on the within described premises of dyna-

mite, fireworks, Greek fire, gunpowder in excess of fifty pounds, nitro glycerine or other explosives is prohibited and shall wholly suspend this policy during the period such use, keeping, allowing or storing shall continue unless a specific permit therefor is attached to this policy.

“Lightning Clause.” This policy shall cover any direct loss or damage by lightning (meaning thereby the commonly accepted use of the term “lightning” and in no case to include loss or damage by cyclone, tornado or windstorm) not exceeding the sum insured nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy; Provided, however, that if there shall be any other insurance on said property this company shall be liable only pro rata with such other insurance for any direct loss by lightning whether such other insurance be against direct loss by lightning or not.

“Electrical Exemption Clause.” If dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are insured by this policy, this insurance shall not cover any immediate loss or damage to dynamos, excitors, lamps, motors, switches, or any other apparatus for generating, utilizing, testing, regulating, or distributing electricity, caused directly by electric currents therein whether artificial or natural.

This Policy is made and accepted subject to the foregoing stipulations and conditions, and to the following stipulations and conditions printed on back hereof, which are hereby specially referred to

and made a part of this Policy, together with such other provisions, agreements, or conditions as may be endorsed thereon or added hereto; and no officer, agent or other representative of this Company shall have power to waive any provision or condition of this Policy except such as by the terms of this Policy may be the subject of agreement endorsed hereon or added hereto; and as to such provisions and conditions no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the insured unless so written or attached.

Provisions required by law to be stated in this policy.—This policy is in a stock corporation.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid until countersigned by the duly authorized Agent of the Company at Morton, Washington.

CHARLES H. COATIS,
President.

E. R. VOORHIES,
Agent.

WM. G. ARMSTRONG,
Secretary.

Countersigned at Morton, Washington, this 3d day of June, 1924.

This company shall not be liable beyond the actual cash value of the property at the time any

loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper reduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to

this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering or replacing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if

illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom or trade or manufacture to the contrary notwithstanding) there be kept, used or allowed on the above described premises, benzine, bensole, dynamite, ether, fireworks, gasoline, Greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitroglycerine, or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard (which last may be used for lights and kept for sale according to law, but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority, or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the

result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be canceled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it shall retain only the *pro rata* premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of

removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certi-

ificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for re-insurance shall be specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery

of any claim shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached, or appended hereto.

[Endorsed]: Standard Fire Insurance Policy. Stock Company. No. 50419. Washingtndn Underwriters, New York. Policy of National Liberty Insurance Co. of America Head Office 709 6th Ave., New York, N. Y. Assured: W. A. Milligan, Morton, Washington, Date June 1, 1924. Expires June 1, 1925. Amount—\$1200.00. Premium—\$60.00. Rate—5.00. Property—Furniture and Fixtures. E. R. Voorhies, Agent.

[Endorsed]: No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

(Testimony of W. A. Milligan.)

Q. (Mr. SAM A. WRIGHT.) When was that policy delivered to you, Mr. Milligan?

A. It was about the 6th or 7th of June that he brought it over to me.

Q. Did he prepar*air* any other insurance for you at that time? A. He did.

Q. How much? A. \$2,000.

Q. In what company?

A. The Washington Underwriters, the National Liberty [32] Insurance Company?

Q. In this same company? A. Yes, sir.

Q. What was done about that insurance?

A. It was cancelled.

Q. With whom did you agree as to the amount of premium in this policy?

A. With Mr. Voorhees.

Mr. HULBERT.—I object to that. The evidence does not show that he agreed with anybody.

The COURT.—The objection is overruled.

Q. (Mr. SAM A. WRIGHT.) Did you have any dealings with any other representatives of this company in reference to insurance, whatever?

A. I did not.

Q. Now, Mr. Milligan, subsequent to that date did you have any dealings with Mr. Voorhees?

A. Yes.

Q. On what date did you have those dealings with Mr. Voorhees?

A. On Tuesday, July 22, 1924.

Q. And tell the jury what those dealings were.

(Testimony of W. A. Milligan.)

A. I called at Mr. Voorhees' office and I said, "I guess it is about time for me to—"

Mr. HULBERT.—I object to the conversation.

The COURT.—The objection is overruled.

A. (Continuing.) "—to see about some insurance," and Mr. Voorhees said, "It is about time, my brother, it is just about time." He had been after me before, right along, for insurance. He said, "I will be over this evening and [33] inspect your place, and we will fix it up."

Q. (Mr. SAM A. WRIGHT.) Did he come over that evening? A. He did.

Q. Tell the jury what took place on his arrival that evening.

A. About 7:30 or 8 o'clock Mr. Voorhees came over and I was in the lobby of the hotel, and he said, "I came in to fix up that insurance, and I want to go around to see what shape the building is in," and I said, "Do you want me to go with you, or will you go alone?" And he said, "I will go alone; I know this hotel as well as you do." And he went upstairs and was gone a few minutes, and came in and went out back, and then he said to me, "Mr. Milligan, you ought to have twice as much as you have now," and I said, "Maybe so; but I cannot afford it; it will cost too much money." And he said, "You haven't a great deal of insurance because the loan company has—"

Mr. HULBERT.—I object to this.

The COURT.—There is no need of going over all the infinite details, but he may proceed briefly.

(Testimony of W. A. Milligan.)

A. (Continuing.) “—And there was \$1,200 Mr. Bergon has, and you haven’t hardly anything,” and I said, “\$10,000 would be all I can handle,” and he said, “All right, we will make it \$10,000.” And he takes out his pencil and paper and asked what my initials were and I told him W. A., and he said, “How do you want to place it, all on the building?” And I said, “\$6,000 on the building, and \$4,000 on the furnishings and equipment; you know I own the building and the barber-shop and the pool-room and the cafe,” and he said, “Yes, I know that [34] well,” and he said, “We will make it \$10,000,” and I said “How much will it cost me?” and he said “\$500,” and I said, “Can’t you make it less than that?” and he said, “No, it is a straight 5% for one year,” and I asked if he would not give me 3 years for the price of two, and he said, “No, I cannot vary 5 cents from that rate,” and he said, “You can have 60 days to pay this premium,” and, “I will have a check for you in 60 days,” I said. “I may not need the 60 days,” I said, and I said, “What company are you placing this in?” And he said, “In the Washington Underwriters,” and I said, “Is that a good company, is that a local company?” And he said, “Oh, yes, that is just the name of the policy, the Underwriters, it is the National Liberty Insurance Company of New York, one of the strongest in the world,” and I said, “All right,” and he put this in his pocket, and I said, “When will this take effect?” and he said, “Right now; you are insured right

(Testimony of W. A. Milligan.)

now; I will date it at 12 o'clock noon to-day, and if your building burns down tonight you will get every dollar of your insurance." He said, "I will go over to the office and fix up the policy and deliver it to you to-morrow."

Q. Was there anybody present during that conversation, Mr. Milligan?

A. Yes, sir, Mr. Bert Bagley.

Q. Did he make any reference, when you asked about this insurance company, to the other policy?

A. Yes, sir. He said, "It is just the same company as the little policy, the same company as the original Steve Bergon policy." [35]

Q. Had he distributed any literature around your hotel advertising this company?

A. Yes, sir, that is one of the things he called attention to when I arrived that he had placed desk pads and blotters around.

Mr. HULBERT.—I object to that as immaterial.

The COURT.—Rather so, but it simply shows—

Mr. SAM A. WRIGHT.—It shows the way this man was held out as the agent.

The COURT.—It might be a circumstance corroborative of the other testimony of the witness.

Q. (Mr. SAM A. WRIGHT.) Who collected the premium on this first policy? A. Mr. Voorhees.

Q. When did you next see Mr. Voorhees about this matter that had taken place on July 22d?

A. Next morning.

Q. What took place at that time?

A. Mr. Voorhees came in the office and he said,

(Testimony of W. A. Milligan.)

“I fixed up a memorandum on that insurance, but I found I was out of that particular form, and I asked them down to Seattle, and it will be in the mail and I will get it next day,” but he said, “Do not let it bother you. You are covered from yesterday at noon, the same as if you had the policy in your hand.”

Q. Was there any memorandum that he had prepared exhibited to you at that time?

A. He had a little memorandum where he had the name of the insured on it and the amount and the company.

Mr. SAM A. WRIGHT.—If your Honor please, I have [36] served notice on the defendant to produce that memorandum, and I will now ask them to produce it.

Mr. HULBERT.—We never had any such memorandum. You can put Mr. Voorhees on the stand and ask him about it if you wish.

The COURT.—That is sufficient. Proceed.

Q. (Mr. SAM A. WRIGHT.) Just tell the jury, Mr. Milligan, what that memorandum was, as you recall it.

A. Well, the name of the insured was my name, W. A. Milligan, Morton, Washington, and \$6,000 on the Morton Hotel building, and \$4,000 on the furnishings and equipment, and it was dated from July 22, 1924, at 12 noon, in the Washington Underwriters, National Liberty Insurance Company, and signed by E. R. Voorhees, agent.

(Testimony of W. A. Milligan.)

Q. When did you next have a conversation with Mr. Voorhees about this matter?

A. Friday evening.

Q. On what date? A. July 5, 1924.

Q. What was that conversation?

A. I said, "Mr. Voorhees, have you got that policy for me? I am going to Seattle to-morrow, and I want to take it down and put it in my safety deposit vault. I do not like to keep that stuff around here. I like to keep it all together," and he said, "By golly, that hasn't come yet." He said, "You know how our mails are from Seattle, and it hasn't arrived, and possibly it is in the post office now, and you will not be leaving until noon," and I said, "No," and he said, "If it is in the mail I will fill it out, fill out the details in [37] it, and deliver it to you in the morning," and he said, "Do not let it bother you; you are covered from Tuesday noon."

Q. Was anybody present on that occasion that you remember of? A. Yes, sir.

Q. Who was present? A. Mr. Fletcher.

Q. What happened that night?

A. That was the night of the fire.

Q. Did the fire take place that night?

A. Yes, sir.

Q. About what time? A. Between 1 and 1:30.

Q. And what happened as a result of that fire?

A. The hotel was totally destroyed.

Q. Were all the contents likewise destroyed?

A. Yes, sir.

(Testimony of W. A. Milligan.)

Q. During the time this fire was in progress did you meet and have a conversation with Mr. Voorhees? A. I did.

Q. What was that conversation?

A. I met Mr. Voorhees and I said, "I guess I was pretty lucky getting that insurance," and he said, "I will say you was, I will say you was."

Q. And did you have a conversation later on that same morning with him?

A. Yes, sir; next morning.

Mr. HULBERT.—I object to that as incompetent; what was said afterwards by an agent cannot bind [38] his principal.

The COURT.—I think so. The objection is sustained.

Mr. SAM A. WRIGHT.—I think that is correct. I will withdraw the question.

Q. (Mr. SAM A. WRIGHT.) Where did you go after the fire? A. I came down to Seattle.

Q. And where did you go upon your arrival at Seattle?

A. When I arrived I went to Lamping & Company's office.

Q. How did you happen to go there?

A. Mr. Voorhees told me he had sent a wire to Lamping & Company.

Mr. HULBERT.—We object to that.

The COURT.—He may answer; the objection is overruled.

Q. (Mr. SAM A. WRIGHT.) Will you state at

(Testimony of W. A. Milligan.)

whose request you went to Lamping & Company's office? A. Mr. Voorhees'.

Q. For what purpose?

A. To see about an adjuster.

Q. What took place when you arrived at the office of Lamping & Company?

A. It was later Saturday afternoon and the office was closed.

Q. When did you visit them again?

A. Monday morning about 10:30.

Q. What happened?

A. I went to the office and the young lady came to the desk and I told her I was Mr. Milligan of Morton, Washington, of the Morton Hotel, and she said, "Oh, yes; you had better see Mr. Lamping," and Mr. Lamping came up and I [39] told him I was Mr. Milligan of the Morton Hotel, and he said, "Oh, yes, we received a wire from Mr. Voorhees."

Mr. HULBERT.—I object to that.

The COURT.—What is the object of this?

Mr. SAM A. WRIGHT.—As showing the agent Voorhees had sent for an adjuster to adjust this loss.

The COURT.—Is that the only purpose of it?

Mr. SAM A. WRIGHT.—That is the purpose of it.

Mr. HULBERT.—That is wholly incompetent.

Mr. SAM A. WRIGHT.—As showing the understanding of the agent, the understanding the agent had that he had insured this property and that he

(Testimony of W. A. Milligan.)

had requested an adjuster in this company to adjust the loss.

The COURT.—As far as it shows an attempt to comply with the terms of the policy to adjust it, he may proceed.

Mr. SAM A. WRIGHT.—That is the additional purpose of it, and also it was notice of the loss.

The COURT.—You may make that showing if they knew it.

Q. (Mr. SAM A. WRIGHT.) Just what happened when you met Mr. Lamping?

A. He said, “Oh, yes,—”

The COURT.—Not about a telegram he received. If you made a request for an adjuster you may state it.

Q. (Mr. SAM A. WRIGHT.) Did you request an adjuster of Mr. Lamping at that time?

A. No, sir. [40]

The COURT.—I think you may proceed to show that Mr. Lamping had said he would send an adjuster or anything of that sort.

Q. (Mr. SAM A. WRIGHT.) What was said by Mr. Lamping as to whether an adjuster would be sent out? A. Nothing.

Mr. SAM A. WRIGHT.—Mr. Hulbert, I have served a notice to produce, upon you, some proofs of loss submitted. Have you them? We have a copy here.

Mr. HULBERT.—We do not make any question about that. I think the proof of loss was filed.

(Testimony of W. A. Milligan.)

Mr. ELIAS A. WRIGHT.—You admit the proof of loss was filed and received?

The COURT.—Proceed with your copy if you have it.

Q. (Mr. SAM A. WRIGHT.) Did you proceed to prepare a proof of loss in this matter?

A. Yes, sir.

Q. Is that the proof of loss you caused to be delivered to this defendant company? (Handing to witness.)

A. Yes, sir.

Mr. SAM A. WRIGHT.—I will offer it in evidence.

The COURT.—It may be admitted.

(Proof of loss admitted in evidence as Plaintiff's Exhibit 8.)

PLAINTIFF'S EXHIBIT No. 8.

8952. Plffs. Exhibit 8. Admitted.

To The National Liberty Insurance Company of
America, 709-6th Avenue, New York City, New
York,

and

To Lamping & Company, Inc., its General Agents
Colman Building, Seattle, Washington.

On July 22, 1924, your agent, E. R. Voorhies, in Morton, Washington, accepted from me ten thousand dollars (\$10,000.00) insurance in your Company on my hotel at Morton, Washington. The insurance was divided as follows: six thousand dollars (\$6000.00) on the building and four thousand dollars (\$4000.00) on the hotel, or apartment, or

boarding or lodging house furniture, fixtures, furnishings, building materials, etc. and the restaurant furniture, fixtures, and equipment, the pool hall furniture, fixtures, and equipment, and the barber shop furniture and equipment; all of which was situated in my hotel building, in Morton, Washington, which is described as "facing East on Second Street, Morton, Washington, Fire Map thirteen (13) numbers 37-38-39."

Mr. Voorhies, had previously, as agent for your Company accepted and written your policy Number 50419 on some of this property, and on the date specified, to wit: July 22, 1924, after making a detailed examination of the entire property accepted in your behalf the additional insurance in the amount indicated above; and on the evening of July 23d assured me in the presence of witnesses that I was covered in your Company, and on the evening of July 25, 1924, when I asked if the policy were yet ready for delivery he again assured me that I was covered, and had been covered since July 22, 1924 and that the insurance was effective as of that date; and that my premium would be figured from July 22, 1924 to July 22, 1925, and informed me of the amount of the premium which was the sum of five hundred dollars (\$500.00); and which said premium I was to have sixty (60) days in which to pay, and which premium in the amount specified, I have heretofore tendered to him. Under the circumstances it is my contention that your Company insured me against loss and damage by fire, as to the items hereinbefore specified to the amount of ten thousand dollars

(\$10,000.00) over and above the other policy of insurance referred to as your Policy Number 50419, and referred to above.

You are further notified that in addition to the amount of insurance in your Company there was fire insurance upon the building only to the extent of fifteen thousand dollars (\$15,000.00) which policies are in the possession of the Pacific Savings and Loan Association of Tacoma, Washington; but the names of the Companies, in which this insurance was placed, and the amount thereof, is not now known to me, as that Company as the mortgagee of the real property has possession of the policies of insurance, and handling the matter of adjustment as it has twelve thousand dollars (\$12,000.00) upon the real property.

You are again notified, although I have previously notified you that a fire occurred on the morning of Saturday, July 26th, 1924 about 1:15 A. M., and as a result thereof, the property insured, both building, and personalty were totally destroyed by fire. The origin and cause of the fire is unknown, but it is supposed to have originated in one of the sleeping rooms on the first floor of the hotel property, where the son and daughter of the proprietress of the restaurant were sleeping.

You are further notified that the actual value of the building destroyed was at least the sum of twenty-five thousand dollars (\$25,000.00) at the time of the fire loss, and that the actual value of the personal property destroyed by fire will exceed, and did exceed ten thousand dollars (\$10,000.00).

An inventory of the various items of personal property segregated as to its location, is attached hereto, and the insured claims of your Company by reason of said loss, damage, and insurance, exclusive of your policy Number 50419, the sum of ten thousand dollars, in full of its proportion of said loss.

You are further notified that the insured, the undersigned, stands ready and willing to furnish any other additional proof of the placing of said insurance, the extent or value of the said property, as your Company may wish or desire.

You are further notified that the property belonged to the undersigned, and that there was a mortgage on the real property in favor of the Pacific Savings and Loan Association, of a balance in the sum of twelve thousand dollars, and a small amount of interest; and that there was a Chattel Mortgage on the personalty in favor of S. J. Bergen of Morton, Washington, in the sum of twelve hundred dollars.

You are further notified that the said fire did not originate by any act, design, or procurement on the part of the assured, nor on the part of any one having any interest in the property insured, or in the insurance, nor in consequence of any fraud, or evil practice, done or suffered by the said assured; that nothing has been done by or with the privity or consent of the assured in connection with the said fire loss, or to increase the fire hazard; and that any other information that may be required by your Company as aforesaid, will be furnished on call, and considered a portion of this proof.

IN WITNESS WHEREOF, I have caused this proof of loss to be executed this 5th day of August,
W. C. MILLIGAN.

1924.

State of Washington,
County of King,—

W. A. Milligan, being first duly sworn on his oath deposes and says: That he is the person who has signed the above and foregoing Proof of Loss, that he has read same, is familiar therewith, and swears, that same is true, and that no material fact known to him, is withheld, that the Insurance Company, other than is stated in the above manner or matter whatsoever, but that if there is any additional information desired by the Insurance Company, other than is stated in the above and foregoing Proof of Loss, he will gladly furnish same.

[Seal]

W. A. MILLIGAN.

Subscribed and sworn to before me this 5th day of August, 1924.

SAM A. WRIGHT.

Subscribed and sworn to before me this — day of August, 1924.

Sixteen Rooms.

16 beds	\$432.00
springs	240.00
mattresses	380.00
blankets	128.00
32 sheets	56.00

16 bed spreads	52.00
32 pillow slips	32.00
32 quilts	112.00
16 plain chairs	64.00
16 rocking chairs	144.00
16 tables	204.00
16 dressers	480.00
32 table runners	16.00
48 towels	9.60
16 pitchers	11.20
16 slop jars	20.00
16 glass holders	5.60
16 water glasses	1.60
32 curtains	28.00
32 drapes	48.00
16 rugs	336.00
32 clothes racks	24.00
16 pair pillows	143.20
16 cuspidors	9.60

Twenty-four rooms.

24 beds	\$450.00
springs	288.00
mattresses	450.00
blankets	96.00
sheets	84.00
24 bed spreads	78.00
72 pillow slips	72.00
48 quilts	168.00
48 plain chairs	168.00
24 tables	192.00
24 dressers	450.00

74 *National Liberty Ins. Co. of America*

72 towels	14.40
24 pitchers	16.80
24 slop jars	30.00
24 water glasses	2.40
48 curtains	42.00
24 rugs	288.00
48 clothes racks	36.00

Store room.

3 rag rugs	\$16.00
7 quilts	24.50
18 pictures	108.00
carpet sweeper	5.00
dust mop	1.25
3 curtain rods .....	.45
2 steel cots	7.50
2 hand sprayers	1.50
broom .....	.50
11 clothes racks	5.50
vacuum cleaner & hose.....	25.00
box palm olive soap	8.00
53 pillow slips	53.00
2 small rugs	3.00
laundry basket	1.50
56 hand towels	11.20
67 sheets	117.25
36 bath towels	10.80
5 pairs curtains	8.75
7 table covers	7.00
12 slop jars	15.00
3 pans	2.25

Lobby.

3 oil paintings	\$150.00
1 clock	15.00
1 safe	150.00
desk	125.00
key rack	15.00
7 chairs	42.00
2 rockers	25.50
1 table	18.75
1 long table	35.00
2 mats	10.00
6 high shades	12.00

Locker Room.

2 floor brushes	\$3.00
window brush	1.50
oil mop	1.25
fire extinguisher	25.00
4 cuspidors	4.00

Banquet Hall.

4 long tables	\$60.00
1 steel cot	3.75
8 chairs	32.00
baby bed and springs	10.00
1 quilt	3.50
1 blanket	4.50
couch cover	2.75
mattress	4.75

Gents' Bath room.

1 chair	\$3.50
1 small rug	1.50
2 bath towels .....	.60
2 hand towels .....	.40
soap dish .....	.25
cuspidor	1.00
paper rack	1.25

Ladies' Bath Room.

1 chair	\$3.50
1 small rug	1.50
2 bath towels .....	.60
2 hand towels .....	.40
soap dish .....	.25
cuspidor	1.00
paper rack	1.25

Halls.

hall carpet	\$825.00
8 curtains	14.00
4 pair drapes	12.00

Laundry room.

8 lamps	\$4.00
ice box	25.00
1 range	25.00
15 pictures	45.00
wash tub, fruit jars and 2 lanterns....	5.00

Wash room upstairs.

1 large mirror	\$10.00
----------------------	---------

4 towels .....	.80
2 chairs	7.00

Restaurant—

Dining room.

9 sets knives and forks	\$45.00
26 big spoons	19.50
4 sets tea spoons	12.00
childs knife and fork	1.00
3 covered glass dishes and extra cover..	4.50
1 glass cake stand	1.50
7 candy trays	7.00
5 glass sauces .....	.75
8 tables	96.00
8 chairs	32.00
3 child's high chair	9.00
2 stools	3.00
9 swivel chairs	58.50
1 show case	25.00
wall case and back bar mirror	1000.00
39 salt and pepper	3.90
4 tooth pick holders .....	.40
12 sugar bowls	2.40
2 mustard jars .....	.30
1 vinegar cruet .....	.20
6 tea pots	1.80
6 napkin holders	1.50
19 lamp shades	14.25
8 syrup jugs	2.00
1 glass cream pitcher .....	.15
32 soup bowls	3.20
11 mush bowls	1.10

14	sauce dishes .....	.70
30	pie plates	4.50
30	creamers	3.00
16	butter chips	1.60
3	whippers	1.05
1	toaster .....	.35
1	large grater .....	.35
1	thermometer	2.50
2	large iron forks	1.00
1	egg beater .....	.50
2	biscuit cutters .....	.30
1	measuring set spoons .....	.25
3	funnels .....	.75
5	soup ladles	1.25
5	strainer ladles	1.75
4	wooden spoons	1.00
2	cake turners .....	.50
1	iron spoon .....	.50
1	beater .....	.50
1	china cup .....	.10
1	tea strainer .....	.25
1	can opener .....	.25
2	funnels with handle	1.00
6	gem pans	1.50
2	cake tins (square) .....	.30
8	cake tins (round)	1.20
17	pie tins	2.55
3	cake pans .....	.45
1	chopping board .....	.15
8	square cake pans	2.40
2	large coffee pots	6.00
2	small coffee pots	3.00

1 gallon oil can .....	.75
28 coffee cups	4.20
19 vegetable dishes	5.70
22 side dishes	3.30
26 large platters	9.10
29 small platters	7.25
21 large plates	4.20
5 soup dishes .....	.75
2 lunch counters	6.00
kitchen steamtable	75.00
8 kettles and covers	16.00
2 platters and covers	1.00
2 candy jars	1.00
1 glass cake box .....	.30
15 water glasses .....	.75
1 bell .....	.35
1 Lang range and hood	550.00
11 stone jars	5.50
1 tea pot .....	.35
1 chafing dish frame	1.00
1 meat grinder	2.30
1 coffee grinder	1.25
1 sieve .....	.50
1 bread board .....	.50
1 marble slab	12.00
1 cookie jar .....	.50
3 enameled ware pitchers .....	.90
1 white pitcher .....	.30
2 wire potato mashers .....	.50
1 wood potato masher .....	.25
4 large pans	6.00

1 copper kettle	3.00
(bailes reserved)	
2 chocolate stew kettles	
(bailes reserved)	3.00
1 sieve .....	.25
1 pint measure ....	.15
3 collenders .....	.75
2 sieves .....	.50
1 tea kettle	3.00
3 fry pans (large)	6.00
7 fry pans (small)	7.00
12 bread pans (large)	4.20
1 roasting pan (oval)	3.00
1 roasting pan (square)	3.00
16 pot covers	2.40
2 large kettles (fawcets)	12.00
1 small kettle (fawcets)	3.00
1 steamer and cover	1.50
1 round bottom kettle (iron)	3.00
1 iron donut kettle	3.00
2 wire nets	1.00
2 small kettles and covers .....	.70
1 sixty gal. tank & stand	25.00

Barber Shop.

1 barber chair	\$125.00
2 settees	30.00
1 back case and mirror for 3 chairs.....	250.00
1 glass cupboard	75.00

(Testimony of W. A. Milligan.)

Pool Room.

2 pool tables	\$300.00
1 bar and back bar	1250.00
1 refrigerator and show case combination	200.00
One pipe display case	35.00
1 top case	25.00
2 glass display wall cases	750.00
1 cash register #860014	650.00

New Stuff.

6 rugs	\$126.00
2 dozen sheets	47.00
2 dozen hand towels	4.40
1 dozen bed spreads	39.00

Grand Total\$14,177.40

[Endorsed]: No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

Q. (Mr. SAM A. WRIGHT.) State whether or not you subsequently paid the premium—

The COURT.—Is it necessary to show the time it was prepared and served? [41]

Q. (Mr. SAM A. WRIGHT.) Do you know how long after the fire your proof of loss was prepared and delivered to the defendant company?

A. Just a few days.

Mr. SAM A. WRIGHT.—I think it is dated, if Your Honor please.

(Testimony of W. A. Milligan.)

The COURT.—Very well.

Q. (Mr. SAM A. WRIGHT.) Did you subsequently pay the premium upon this insurance?

A. I did.

Q. To whom did you pay it?

A. To Mr. Voorhees.

Q. Is that the certified check with which you paid it? (Handing to witness.) A. It is.

Q. That was delivered to Mr. Voorhees?

A. Yes, sir.

Mr. HULBERT.—You do not claim you paid it, but that you tendered it.

Mr. SAM A. WRIGHT.—We claim it was sent to Mr. Voorhees and received by him.

Mr. HULBERT.—And returned.

Mr. SAM A. WRIGHT.—Yes.

Q. (Mr. SAM A. WRIGHT.) How long was this check retained by Mr. Voorhees?

A. Over 60 days.

Q. And it was subsequently returned to you?

A. Yes, sir.

Mr. SAM A. WRIGHT.—We will offer this in evidence, and also as a tender and the keeping [42] of the tender of the premium good on this insurance.

Mr. HULBERT.—Have you the letters that accompanied it?

Mr. SAM A. WRIGHT.—Yes.

Mr. HULBERT.—Will you let me have it please?

Mr. SAM A. WRIGHT.—I have also served notice on you too, a notice to produce a letter which accompanied that check. Have you that letter?

(Testimony of W. A. Milligan.)

Mr. HULBERT.—I do not think we have, but I will admit the letter was sent.

The COURT.—You may use the copy.

(Check was marked Plaintiff's Exhibit 9 and admitted in evidence.)

PLAINTIFF'S EXHIBIT No. 9.

8952. Plffs. Exhibit 9. Admitted.

Seattle, Washington, Aug. 4, 1924.

No. 299.

19-3-12

THE NATIONAL BANK OF COMMERCE

Pay to the order of C. R. Voorhies \$500.00 Five Hundred Dollars.

W. A. MILLIGAN.

[Stamped across face:] No. 66620. Certified Aug. 4, 1924. The National Bank of Commerce of Seattle. F. W. Smith, Cashier. Certified Check.

[Endorsed]: No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

Q. (Mr. SAM A. WRIGHT.) Is that the letter to Mr. Voorhees, or a copy of the letter, which accompanied the check?

A. Yes, sir.

Mr. SAM A. WRIGHT.—I will offer that in evidence if the Court please.

(Said letter was then marked Plaintiff's Exhibit 10.)

PLAINTIFF'S EXHIBIT No. 10.

8952. Plffs. Exhibit 10. Admitted.

August 4, 1924.

Mr. E. R. Voorhies,

Agent of the National Liberty Insurance Com-
pany of America, Morton, Washington.

Dear Sir:

You will find enclosed herein a check in the sum of five hundred dollars (\$500.00) tendered on behalf of W. A. Milligan for the additional ten thousand dollars (\$10,000.00) of insurance placed by him with you on July 22, 1924 on his hotel, restaurant, and pool and billiard hall, and barber shop in Morton, Washington. You will recall that this policy was divided six thousand dollars (\$6,000.00) upon the building, and four thousand dollars (\$4,000.00) upon the personalty, in the different parts of his establishment.

The amount of this check was the agreed amount of the premium and while under Mr. Milligan's arrangement with you he seems to have had sixty (60) days in which to pay the premium, yet since the fire has now occurred, and in view of the fact that the policy of insurance has not been delivered, for reasons well known to yourselves, and ourselves, yet the tender of the premiums is being made at this time for the protection of Mr. Milligan's rights.

Very truly yours,

SAW:ER.

WRIGHT & WRIGHT,

By _____.

(Testimony of W. A. Milligan.)

[Endorsed]: No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

Q. Mr. Milligan, what was the value of the contents of the various departments of that hotel, the furniture and equipment?

A. The whole thing, the furnishings, I valued at \$9,500.

Q. And what was the value of the building?

A. \$25,500.

Mr. SAM A. WRIGHT.—You may cross-examine. [43]

Cross-examination.

(By Mr. HULBERT.)

Q. I will take up the last statement you made regarding the payment of the \$500 alleged premiums; that your attorneys sent, did they not?

A. They wrote the letter for me.

Q. And you sent the premium, the \$500, to Mr. Voorhees, after you had consulted your attorneys about commencing a suit? A. No, sir.

Q. After you had put the matter in the hands of the attorneys, at least? A. Yes, sir.

Q. And Mr. Voorhees sent that check back to you through your attorneys, did he not?

A. After about 60 days.

Q. I am asking you if he did not send it back to you through your attorneys? You can answer that without any argument. A. Yes, sir.

Q. Is that the letter you received from Mr.

(Testimony of W. A. Milligan.)

Voorhees through your attorneys enclosing that check which gives the excuse or reason for not having sent it before? (Handing to witness.)

Mr. SAM A. WRIGHT.—I object. You are drawing a conclusion from the letter.

Mr. HULBERT.—I will offer the letter in evidence.

Mr. SAM A. WRIGHT.—We have no objection.

The COURT.—It may be admitted. [44]

(Letter admitted in evidence and marked Defendant's Exhibit "A.")

Mr. HULBERT.—I desire to read the letter to the jury.

(Reading said Exhibit "A.")

DEFENDANT'S EXHIBIT "A."

8952. Defendant's Exhibit "A." Admitted.

Lem W. Bowen, President
D. M. Ferry, Jr., Vice-President
Dwight Cutler, Vice-President

J. S. Heaton, Vice-President &
Treasurer
J. H. Thom, Vice-President
Kennedy R. Owen, Vice-President
Charles C. Bowen, Secretary

Incorporated 1884.

STANDARD

ACCIDENT INSURANCE COMPANY,

OF DETROIT, MICHIGAN.

EDWIN R. VOORHIES.

District Agent
Morton, Wash.

October 2, 1924.

(Testimony of W. A. Milligan.)

Mr. W. A. Milligan,
Care Wright and Wright,
Attorneys at Law,
Seattle, Washington.

Dear Sirs;—

On August 4th, 1924, you sent me the enclosed certified check for \$500. on the National Bank of Commerce. This check was sent by your Attorneys, Wright and Wright and purported by them to be the premium on insurance which was not issued nor accepted by me or the Company I represent.

I would have returned this check at that time, but I did not know your address and have not been able to find out, hence I am returning it through the same source in which you sent it.

Yours very truly,

ERV/MS

E. R. VOORHIES,

Registered to Wright and Wright,
#629—31—33 Burke Building,
Seattle, Wash.

[Endorsed]: No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

Q. (Mr. HULBERT.) At the time you claim you got this insurance upon this building, how long had you owned the building?

A. The first policy?

Q. How long had you owned the building?

A. There are two insurance policies.

(Testimony of W. A. Milligan.)

The COURT.—Tell us when you bought the building.

Q. (Mr. HULBERT.) I am not asking you, about your policy of insurance, but I am talking about this alleged oral contract of insurance that you are suing on. How long prior to that time had you owned this building? A. Two months.

Q. And how much insurance was there on that building already? A. \$16,200.

Q. And you went on Tuesday and talked with Mr. Voorhees, on Tuesday I understand?

A. Yes, sir.

Q. About the insurance, and you talked with him on Wednesday. A. Yes, sir.

Q. On Wednesday morning at 11 o'clock?

A. Yes, sir.

Q. And again on Wednesday evening?

A. Yes, sir.

Q. Did you not ask him again on Wednesday evening whether or [45] not you were covered?

A. I did not.

Q. Do you remember meeting Mr. Voorhees Saturday morning just after the fire? A. Yes, sir.

Q. Is it not true that you asked Mr. Voorhees this question in the presence of Claud Morris, of Morton, did you not ask Mr. Voorhees at that time if that insurance was in force? A. No, sir.

Q. Or words to that effect?

A. Something to that effect.

Q. And is it not true that Mr. Voorhees told you

(Testimony of W. A. Milligan.)

that he did not know, that he would have—he had not heard from Seattle? A. It is not true.

Q. Or words to that effect? A. No, sir.

Q. Is it not true that right from the start Mr. Voorhees told you sir, that he would take it up with Seattle to see whether or not they would place more insurance on that building? A. It is not.

Q. After the fire you came to Seattle on Saturday? A. Yes, sir.

Q. And where did you go on Saturday to inquire about this insurance?

A. I did not go anywhere to inquire about insurance.

Q. Did you not go to Seeley & Company, Insurance Agents, in this town, to ask them about the Washington State [46] Underwriters?

A. I did not.

Q. Do you know Mr. Brennan in Seeley & Company's office? A. No, sir.

Q. Will you tell the jury you did not go to Seeley & Company's office and ask Mr. Brennan there about the Washington State Underwriters, telling him you had your building insured in an oral agreement in the Washington State Underwriters? A. I will.

Q. You did not call at Seeley's office at any time? A. I did.

Q. When was that? A. I think on Monday.

Q. On Monday? A. Yes, sir.

Q. And you went there and asked about the Washington State Underwriters, did you not?

(Testimony of W. A. Milligan.)

The COURT.—When was this, before or after the fire?

Mr. HULBERT.—After the fire.

Q. (Mr. HULBERT.) Was it the Monday after the fire? A. Yes, sir.

Mr. HULBERT.—Thank you, your Honor.

Q. You went to Seeley & Company's office, insurance agents, of this town, did you not?

A. Yes, sir.

Q. And you went there for what purpose?

A. I asked—I am acquainted with Mr. Seeley—

Q. What was your purpose in going there?

A. Asking about the strength of the company.

[47]

Q. Do you tell this jury that you went to Seeley & Company's office merely for the purpose of asking about the strength of this company?

A. I did.

Q. Whom did you meet there?

A. I could not say who it was, but I think it was Mr. Crawford.

Q. Did you not meet Mr. Brennan there?

A. I do not know him.

Q. Did you not tell Mr. Brennan you had *arrange* for fire insurance in the Washington State Underwriters? A. I did not.

Q. And is it not the truth also that you said you had had your arrangements with a man named Voorhees at Morton, and they looked it up, looked up the record and found that they didn't have any

(Testimony of W. A. Milligan.)

agent there, and they told you then and there that they did not have any such agent at Morton?

A. They did not.

Q. You then say you went there simply for the purpose of finding out the strength of the Washington State Underwriters or the National Liberty Insurance Company?

A. I asked about the company, yes. I asked about the company, yes.

Q I asked if that was your purpose. Will you tell the court and jury that your purpose in going to Seeley & Company's office, insurance agents in this town, was to find out the strength of the National Liberty Insurance Company?

Mr. SAM A. WRIGHT.—I object to that on the ground that the question has been already answered.
[48]

The COURT.—A certain amount of repetition is permissible on cross-examination.

Q. (Mr. HULBERT.) Answer the question.

A. Yes.

Mr. HULBERT.—That is all, sir.

Redirect Examination.

(By Mr. SAM A. WRIGHT.)

Q. Mr. Hulbert asked you how much insurance there was on that building, and I understood you to say \$16,200. Was that all on the building?

A. On the building and the furnishings. There was \$1,200 on the furniture and \$15,000 on the building.

(Testimony of W A. Milligan.)

Q. And he asked you what the conversation was with Mr. Voorhees on the Saturday morning after the fire. State to the jury what the conversation was that he was asking you about.

A. I was standing about where the hotel was and Mr. Voorhees came up, and I said, "There will be no question about that insurance?" and he got kind of mad and he said, "I told you 3 or 4 times you were insured, and that you were insured since last Tuesday noon."

(Witness excused.) [49]

TESTIMONY OF EDWARD LAMPING, FOR
PLAINTIFF.

EDWARD LAMPING, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SAM A. WRIGHT.)

Q. Your name is Edward Lamping?

A. Yes, sir.

Q. You live in Seattle? A. Yes, sir.

Q. You are connected with the firm of Lamping & Company? A. Yes, sir.

Q. What is your telephone number?

A. Main 6222.

Q. And that was your telephone number on July, 23d, last year? A. Yes, sir.

(Witness excused.) [50]

TESTIMONY OF E. R. VOORHEES, FOR
PLAINTIFF.

E. R. VOORHEES, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SAM A. WRIGHT.)

Q. Your name is what? A. E. R. Voorhees.

Q. What is your business?

A. In the insurance business.

Q. Whereabouts?

A. At Morton, Washington.

Q. And you were the agent of the National Liberty Insurance Company of America?

A. Yes, sir.

Q. Do you recall a conversation that you had over the telephone on July 23d last, with Lamping & Company? A. Yes, sir.

Q. With whom did you talk?

A. With Mr. Lamping.

Q. Edward Lamping, the gentleman who just left the witness stand? A. Yes, sir.

Mr. SAM A. WRIGHT.—That is all.

(Witness excused.) [51]

TESTIMONY OF JUNE MACKIE, FOR PLAINTIFF.

JUNE MACKIE, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SAM A. WRIGHT.)

Q. Your name is June Mackie? A. Yes, sir.

Q. Where do you live?

A. At Morton, Washington.

Q. How long have you lived there?

A. About 3 years.

Q. What is your business?

A. I work for the Telephone Company at Morton.

Q. Were you the telephone operator at Morton, Washington, on July 23d, last year? A. Yes, sir.

Q. Do you know Mr. Voorhees? A. Yes, sir.

Q. Who just left the stand? A. Yes, sir.

Q. Did you have occasion to place a long distance telephone call for him on July 23d, last?

A. Yes, sir.

Q. Do you remember to whom that call went?

A. It went to Main 6222, Seattle, Lamping & Company.

Q. Did you hear the conversation that Mr. Voorhees had on that occasion? A. Yes, sir. [52]

Q. What did you hear Mr. Voorhees say on that occasion?

Mr. HULBERT.—I object to that as being incompetent, irrelevant and immaterial, and not proper testimony.

(Testimony of June Mackie.)

The COURT.—It seems so to me.

Mr. SAM A. WRIGHT.—It has particular reference to this contract of insurance.

The COURT.—But it is—

Mr. SAM A. WRIGHT.—It has reference to the issuance of the policy and sending of the necessary forms so this agent could prepare the policy.

The COURT.—Before or after the fire.

Mr. SAM A. WRIGHT.—Before the fire, July 23d.

The COURT.—The objection is overruled.

Mr. HULBERT.—Note an exception.

Mr. CLARKE.—She does not know whether it was Mr. Voorhees or Mr. Lamping or either of them.

The COURT.—She says she does.

Mr. CLARKE.—How could she know it was Mr. Lamping that Mr. Voorhees was talking to?

The COURT.—It will be for the jury to say ultimately. The objection is overruled. Proceed.

Q. (Mr. SAM A. WRIGHT.) Tell us what you heard Mr. Voorhees say over the telephone that morning.

A. He said, "This is Mr. Voorhees at Morton," and he said, "I insured Mr. Milligan last evening for \$10,000, \$4,000 on furniture and \$6,000 on the building," and he said, "There is a letter in the postoffice for you now, and I haven't that form of policy," and he said, "If you want to fix the policy and send it back to me [53] O. K., and if you do not, send the form back and I will fix the policy myself."

(Testimony of June Mackie.)

Q. That is the conversation as you recall it?

Mr. SAM A. WRIGHT.—That is all.

Cross-examination.

(By Mr. HULBERT.)

Q. How long have you worked at Morton?

A. I started working a year ago, May 2d.

Q. And you were the long distance girl there at Morton, were you?

A. Well, long distance, it is just a small board, one long distance line and one local line.

Q. You take a lot of calls out of town there?

A. Yes, sir.

Q. And you have a lot of local calls as well as long distance calls? A. Yes, sir.

Q. And for different people? A. Yes, sir.

Q. From all over the country?

A. Just from three different towns, yes, sir, we take calls from all over.

(Witness excused.) [54]

TESTIMONY OF A. W. BAGLEY, FOR PLAINTIFF.

A. W. BAGLEY, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SAM A. WRIGHT.)

Q. Your initials are what, Mr. Bagley?

A. A. W.

(Testimony of A. W. Bagley.)

Q. Where do you live?

A. I am living now in Tacoma.

Q. Where were you living on July 22d, last year?

A. With Mr. Milligan at the Morton Hotel.

Q. You were stopping at the hotel?

A. Yes, sir.

Q. What is your business?

A. I am a locomotive engineer.

Q. For the Milwaukee? A. Yes, sir.

Q. How long have you been such?

A. Since 1900.

Q. Where did you spend your evenings during the latter part of July, last year?

A. Well, summer evenings—

Q. I mean were you living there, where were you making your home?

A. Right at Morton with Mr. Milligan.

Q. At his hotel? A. Yes, sir.

Q. Do you know Mr. Voorhees, the agent for the defendant [55] company?

A. I have met him while I was up there is all.

Q. Did you hear a conversation between Mr. Voorhees and Mr. Milligan relating to an insurance matter, at any time?

A. I heard something pertaining to insurance.

Q. About when was that, Mr. Bagley?

A. That was about three or four days prior to the fire.

Q. And where was the conversation—where did the conversation take place?

A. In the hotel lobby.

(Testimony of A. W. Bagley.)

Q. Just what was that conversation that you heard, as near as you now remember it?

A. Well, I heard Mr. Voorhees say, "You should take out more insurance," and Mr. Milligan said, "I cannot stand it." He said, "I am pretty near broke now," and Mr. Voorhees was writing something on a paper, I do not know what it was, over at the desk, and then he started going out the door and Mr. Milligan asked him, he said, "When does this take effect?" and he said, "You are insured immediately, right now." He said, "If she burns down tonight you are covered."

Q. Did you hear the name of the insurance company mentioned?

A. Why, Mr. Milligan asked him what insurance company this was and he said, "The same as your little policy, the National" something.

Q. The National something? A. Yes, sir.

Q. Do you recall, at this time, any other portion of the name? [56]

A. I do through my subpoena. I now know that it is the National Liberty.

Q. That conversation was how many days before the fire? A. Three or four days.

Mr. SAM A. WRIGHT.—That is all.

Cross-examination.

(By Mr. HULBERT.)

Q. How long had you been living there with Mr. Milligan? A. About 6 weeks.

Q. Living at the hotel?

(Testimony of A. W. Bagley.)

A. Yes, sir. They had just switched our run around so we had to lay over at Morton at night.

Q. You were not interested in the Hotel?

A. No, sir.

Q. And you were not interested in any insurance on the hotel? A. No, sir.

Q. The conversation as far as you were concerned was a casual one and you had no interest in it?

A. I had no particular interest in it, but I was kind of inquisitive when I heard insurance was mentioned, to know what insurance would cost a man in a town like that.

Q. Otherwise you did not have anything to do with it or go into it in any way?

A. No, sir. I talked with Mr. Milligan afterwards.

Q. I am not asking you about that. There was conversation between Mr. Milligan and Mr. Voorhees that you did *not* [57] *all*, was there not?

A. Yes, sir, part of it.

(Witness excused.)

TESTIMONY OF W. T. FLETCHER, FOR PLAINTIFF.

W. T. FLETCHER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SAM A. WRIGHT.)

Q. Your name is W. T. Fletcher? A. Yes, sir.

Q. What is your business?

(Testimony of W. T. Fletcher.)

A. I am in the insurance business now.

Q. Did you formerly live at Morton?

A. Yes, sir.

Q. Were you living there at the time this fire took place? A. Yes, sir.

Q. You were in business there? A. Yes, sir.

Q. Are you acquainted with Mr. Voorhees, the agent of the defendant company?

A. Yes, sir. [58]

Q. Are you acquainted with Mr. Milligan, the plaintiff? A. Yes, sir.

Q. Did you have occasion to hear any conversation that took place between Mr. Milligan and Mr. Voorhees before this fire? A. Yes, sir.

Q. When was that? A. The night of the fire.

Q. And where was that conversation?

A. In the lobby of the hotel.

Q. What time in the evening

A. I suppose about 7 o'clock. I think right after I had had my supper.

Q. Tell the jury what that conversation was, as you remember it.

A. I was sitting in the lobby reading the paper, and I heard Mr. Voorhees and Mr. Milligan, who were sitting behind me, talking, and I took a little interest in insurance—

The COURT.—I know, but just tell us what you heard.

A. (Continuing.) I heard Mr. Milligan ask Mr. Voorhees if that insurance was all right, or practically that. I do not know that those were the

(Testimony of W. T. Fletcher.)

words, I cannot remember the exact words, and I heard Mr. Voorhees say, "Yes, that is all right." That is all I remember about it.

Mr. SAM A. WRIGHT.—You may cross-examine.

Mr. HULBERT.—There is nothing to ask him.
(Witness excused.)

Mr. SAM A. WRIGHT.—The plaintiff rests.
[59]

(Whereupon Mr. Hulbert made an opening statement to the jury of the defendant's case.)

DEFENDANT'S CASE.

TESTIMONY OF E. R. VOORHEES, FOR DEFENDANT.

E. R. VOORHEES, called as a witness on behalf of the defendant, having theretofore been duly sworn, testified as follows:

Direct Examination.

(By Mr. HULBERT.)

Q. What is your name? A. E. R. Voorhees.

Q. You have been sworn? A. Yes, sir.

Q. Where do you live?

A. At Morton, Washington.

Q. What is your business? A. Insurance.

Q. And how long have you lived at Morton?

A. Right in the city almost 2 years.

Q. And you have been engaged in the insurance business since that time? A. Yes, sir.

(Testimony of E. R. Voorhees.)

Q. You were appointed agent for the National Liberty Insurance [60] Company, the defendant in this case? A. Yes, sir.

Q. Did you ever at any time, have the blank insurance policies of the National Liberty Insurance Company so you could write the policies at Morton?

A. No, sir.

Q. In all of your course of dealings with the National Liberty Insurance Company have you ever written a policy of insurance upon your own instigation, at Morton? A. No, sir.

Q. What has been and what was your arrangement with Lamping & Company as to the National Liberty Insurance Company and the other company he represented that you were agent for?

Mr. SAM A. WRIGHT.—We object to that. Prior secret instructions in that respect would not be material here, or competent.

The COURT.—The object is to bring forth the circumstances rendering more likely his defense that he did not undertake at this time to write this policy without submitting it to the general agent. For that purpose it is competent, and it will be for the jury to pass upon the weight to be given to it. The objection is overruled.

(Last question read.)

A. I submitted my applications to Lamping & Company.

Q. (By Mr. HULBERT.) For what purpose?

A. For whatever disposition they cared to make of it.

(Testimony of E. R. Voorhees.)

Q. Was it your custom and was it your dealing all the time, from the start, with those companies that the insurance [61] you submitted was to be accepted or rejected by Lamping & Company?

Mr. SAM A. WRIGHT.—We object to that as leading.

The COURT.—I think so, but it has been fully answered. He said it was sent to them to do with as they pleased. The objection is sustained.

Q. (Mr. HULBERT.) Did you ever at any time, as far as those companies were concerned, determine yourself upon whether you should issue the policy or not, and issue the policy yourself?

A. No, sir.

Q. Do you remember, Mr. Voorhees, having a conversation with Mr. Milligan regarding insurance upon his hotel? A. Yes, sir.

Q. Now, let me ask you this. When was that, when was the first conversation you had with reference to this \$10,000 insurance?

A. It was the afternoon of July 22, 1924.

Q. At that time had you had any dealings with Mr. Milligan regarding insurance?

A. No, sir—yes, on another policy, but not this one.

Q. That is what I mean, another policy.

A. Yes, sir.

Q. Did you submit to Lamping & Company an application for a \$2,000 policy before that time?

A. What?

Q. Had you before that time, submitted *an* re-

(Testimony of E. R. Voorhees.)

ceived a policy from Lamping & Company for Mr. Milligan for \$2,000? A. Yes, sir. [62]

Q. On what, what did it cover, the same property?

A. Yes, sir.

Q. Was that policy ever delivered to Mr. Milligan? A. No, sir.

Q. Why not?

A. I do not deliver a policy until they pay the premium.

Q. And was that policy cancelled? A. Yes, sir.

Q. Why? A. At Mr. Milligan's request.

Q. For what reason?

A. He said he could not meet the premium.

Q. How long was that before July 22, 1924?

A. My records show it was cancelled July 15th, for nonpayment of premium.

Q. Now then, on July 22d, you talked with him again about additional insurance? A. Yes, sir.

Q. What did you say to him about that insurance?

A. I just answered his questions that he made to myself and asked a few questions about insurance.

Q. Did you enter into a contract of insurance with him?

Mr. SAM A. WRIGHT.—We object to that as leading and calling for his conclusion.

The COURT.—The objection is sustained.

Q. (Mr. HULBERT.) Let me ask you this. Just what did take place?

A. He came to my office and said he wanted to ask me a question, and I said, "Proceed," and, "I

(Testimony of E. R. Voorhees.)

will answer if I can." And he said he had a \$12,000 mortgage, as I [63] remember it, on the hotel, in the Pacific Savings & Loan Association of Tacoma, and they held an insurance policy to that amount, and he wanted to know of me, in case of loss, whether or not he would get a part of that insurance or whether the Pacific Savings & Loan Association would get it all.

Q. What did he say about taking out more insurance on the property, did he ask for more insurance?

A. He said he ought to have more insurance.

Q. What did you do? Tell me what you did then.

A. He asked me to come over to the hotel and look it over for the purpose of writing more insurance.

Q. Did you go over to the hotel and look it over?

A. Yes, sir.

Q. Then what did you tell him you would do?

A. I looked the building over and suggested some improvements, cleaning up rubbish, and he said he wanted more insurance.

Q. Well, then what did you do after that, did you take it up with Lamping & Company?

A. I did.

Q. When? A. The next morning.

Q. What, if anything, did you say to Mr. Milligan about taking it up with Lamping & Company, or anybody else? Do you understand my question?

A. No, sir.

Q. I am asking you did you say anything to Mr.

(Testimony of E. R. Voorhees.)

Milligan about taking up this question of additional insurance with Lamping & Company, or anybody else? [64] A. At one time I did.

Q. When was that?

A. That was Tuesday evening.

Q. Just what did you say to him about it?

A. I told him I would take it up with my company.

Q. Then the next morning you made an examination of the building?

A. I did Tuesday afternoon.

Q. And you then telephoned and talked with Mr. Lamping over the telephone? A. I did.

Q. Did you say over the telephone, Mr. Voorhees, to Mr. Lamping, that you had insured this hotel for \$10,000? A. I did not.

Q. Did you say to Mr. Lamping that you did not have copies of the policy and that you wanted him to send them down to you?

Mr. SAM WRIGHT.—We object to that as leading.

Mr. HULBERT.—This is calling attention directly to the question asked the telephone girl. There is no other way that I can do it.

The COURT.—There are two ways it can be done, but I understand the rule is that it is permissible to put a direct question the same as if you were offering it for impeachment. The objection is overruled.

(Last question read.)

A. No.

(Testimony of E. R. Voorhees.)

Q. (Mr. HULBERT.) That would be on July 23d, would it not, Wednesday was July 23d, was that the first time you took [65] it up with Mr. Lamping? A. Yes, sir.

Q. After that conversation did you write to Mr. Lamping? A. Yes, sir.

Q. Is that the letter you wrote to Lamping & Company? (Handing witness letter.) A. Yes, sir.

Mr. HULBERT.—I will offer this letter in evidence.

Mr. ELIAS A. WRIGHT.—We object to this as purely a self-serving declaration between these two agents and something that was never communicated to the plaintiff in any way.

Mr. HULBERT.—It shows the dealings, and not only that but it contradicts the testimony they have already put in here regarding the telephone conversation. They said there was a telephone conversation and it is a part of the *res gestae*, a part of what took place during the transaction between these parties. It shows exactly what they did do. It was at the time this transaction was going on. It is not something that took place afterwards when they were contemplating trouble, but it is a part of the *res gestae* and a part of the original transaction at the time when they claim this contract was entered into. It is not a self-serving declaration that was made after they got into trouble, to protect themselves, and it is not such a statement that they would make in advance in their favor. It is a part of the [66] arrangement made at the

very time the transaction took place. It is proof in contradiction of the plaintiff's own testimony.

Mr. ELIAS A. WRIGHT.—It does not pertain to the telephone conversation.

The COURT.—The issue is whether this witness as the agent for the defendant undertook to insure the plaintiff's property on July 22, 1924, and the negotiations, both parties agree, whatever they were, took place between Mr. Milligan, the plaintiff, and this witness, as the agent of the defendant. Mr. Milligan says there was a contract entered into right then and there, and this witness apparently is going to say that there was not, and he had already said that he merely said to Mr. Milligan, "I will take it up with *Mr. Company*," and now they offer to support it in a way, to corroborate this witness in the fact that he did take it up with his company, by these letters, showing he asked the company as to whether or not it would accept this insurance on Mr. Milligan's property. I think it is admissible, but it is not at all conclusive. If the jury finds he did agree with Mr. Milligan that he would insure it outright, not telling Mr. Milligan he would submit it to the company, the mere [67] fact that thereafter he may have taken it up with his company would not at all affect the arrangements thus made with Mr. Milligan if it was made as Mr. Milligan stated, but the defendant offers this as tending to show he could not have agreed as Mr. Milligan said, but yet he may have agreed as Mr. Milligan says without having the right to do so, and if the

defendant's theory is sound and he then took it up with the company thinking he could get his company to take the policy, it would be merely a corroborating circumstance if the jury takes it as such, and I think it is material and competent, and the objection will be overruled. Proceed.

(Mr. Hulbert then read Defendant's Exhibit "B" to the jury.)

DEFENDANT'S EXHIBIT "B."

#8592. Defts. Ex. "B." Admitted.

M. J. AVERBECK,
Chairman of the Board.

CHARLES H. COATES,
President.

WASHINGTON UNDERWRITERS.

HERBERT A. CLARK,
Manager.

ROBERT C. HOSMER,
Asst. Manager.

New York.

Western Department 207 North Michigan Boulevard,
Chicago, Ill.

E. R. VOORHIES

Resident Agent.

Morton, Washington, July 23, 1924.

Lamping and Co.

Seattle.

Dear Sirs;

Attention of Mr. Lamping.

In accordance with my talk with you to-day over the phone, Mr. A. W. Milligan who owns and runs the Morton Hotel here wishes \$6,000. insurance on the Hotel in addition to what he is now carrying, which is \$15,000. also Mr. Milligan wishes \$4,000.

(Testimony of E. R. Voorhees.)

more on the Hotel furnishings and fixtures, in addition to the \$1200. he now has.

This Hotel is on second street facing east and is worth around \$25,000, is in a good condition and I think is doing a good business. The place has recently been thoroughly repaired and refurnished in a splendid manner.

The mortgage on the building is \$12,000 and on the fixtures and furnishings \$1200. but the latter was on before the new fixtures were put in.

As it stands Mr. Milligan has no insurance on his equity in either. The place is steam heated and electrically lighted and modern in every way.

The published rate is 5% and is in Block 13, Nos. 37, 38, & 39 of Sandborn's Map.

Very truly yours,

E. R. VOORHIES.

[Endorsed]: No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

Q. (Mr. HULBERT.) Now, did you receive a letter from Lamping & Company written on that same day? A. Yes, sir.

Q. Have you tried to find the original of that letter? A. I have.

Q. Have you been able to find it?

A. I have not.

Q. I will ask you to examine that and let me know whether that is an exact copy of the letter

(Testimony of E. R. Voorhees.)

you received from Mr. Lamping, written on July 23d, 1924? (Handing witness letter.)

A. I think it is an exact copy as near as I can tell.

Q. You remember receiving such a letter? [68]

A. Yes, sir.

Mr. HULBERT.—I will offer it in evidence.

Mr. SAM A. WRIGHT.—We object to it for the reasons already given, and it is not shown whether this letter was received before or after the fire, and whether the contents were ever disclosed to the plaintiff.

The COURT.—What is that letter?

Mr. HULBERT.—This is a letter written by Lamping & Company after the telephone conversation, to Mr. Voorhees upon the same date, and these letters crossed on the way, giving Mr. Voorhees instructions, showing the relations between the parties.

The COURT.—These letters, of course, are not evidence of the truth of their contents, but merely are the claim of the defendant corroborative of the fact that this witness did not undertake to issue the policy outright, but submitted it to his company. It is no more than if this witness and Mr. Lamping had noted it down that they had a talk that day. It would be for the jury to say whether they were truly written at that time, and whether or not in spite of it this witness did make the arrangement with Mr. Milligan as Mr. Milligan says he did. For that limited purpose they are admissible but not otherwise.

Mr. SAM A. WRIGHT.—We except to the ruling of your Honor. [69]

Mr. HULBERT.—I will read it.

(Said letter was then marked Defendant's Exhibit "C" and Mr. Hulbert read the same to the jury.)

DEFENDANT'S EXHIBIT "C."

8952. Defts. Exhibit "C." Admitted.

July 23, 1924.

E. R. Voorhies, Esq.,
Morton,
Washington.

Dear Sir:

With reference to telephone conversation regarding placing \$6000.00 additional on W. A. Milligan's hotel building and \$4000.00 additional on his hotel furniture and fixtures, we advise that we are unwilling to handle any further insurance for Mr. Milligan's account. On June first last we wrote \$2000.00 upon his hotel furniture and this policy was cancelled at your request due to your inability to collect premium within the usual credit period. We have another policy that is still in force covering \$1200.00 on hotel furniture and fixtures and we would much prefer to have this policy cancelled as we do not consider this desirable business. It is our belief that Mr. Milligan is over his head and this seems to be a fair conclusion as he was obliged to place a chattel mortgage upon his hotel furniture. In any event, we must insist upon the cancellation of the \$1200. policy, which is #50419 of the WASHINGTON UNDERWRITERS of the NATIONAL

(Testimony of E. R. Voorhees.)

LIBERTY, if Mr. Milligan succeeds in obtaining the additional insurance that he is asking for, which will mean that he is carrying \$21,000. on the hotel building and \$5,000. upon its furniture. The property will be really overinsured if he carries any such amounts of protection. An overinsured risk is the most undesirable proposition there is. If you could recover policy #50419 forwarding to us at an early date, we would be very glad to have all of our liability terminated on the Milligan hotel risk. Please advise.

Yours very truly,

LAMPING & COMPANY, INC.

By _____,

EL/hs.

General Agent.

[Endorsed]: No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

Q. (Mr. HULBERT.) Did you get a reply from Mr. Lamping to your letter of the 23d to him?

A. Yes, sir.

Q. Have you the original of that?

A. I think I have. Here it is. (Handing to Mr. Hulbert).

Mr. HULBERT.—I will offer this reply in evidence.

Mr. ELIAS A. WRIGHT.—And we make the same objection.

The COURT.—Let me see it.

(Letter handed to the Court.)

Mr. ELIAS A. WRIGHT.—That letter is dated

the 25th of July and could not have been received before the fire.

The COURT.—That is not the object. These letters are not proof of their contents, only to show the relation of this witness with Lamping & Company, namely, that he had no right to write insurance on this property, and even then if he entered into the contract of insurance if he did not have express authority to do it, still it would be binding upon the company, but it is corroborative of the statement that he did not undertake to insure this *proper* orally, as Mr. Milligan says he did. The objection is overruled. [70]

(Said letter was then admitted in evidence as Defendant's Exhibit "D" and Mr. Hulbert read the same to the jury.)

DEFENDANT'S EXHIBIT "D."

8592. Defts. Ex. "D." Admitted.

Lem W. Bowen, President
D. M. Ferry, Jr., Vice-President
Dwight Cutler, Vice-President

J. S. Heaton, Vice-President & Treasurer
J. H. Thom, Vice-President
Kennedy R. Owen, Vice-President
Charles C. Bowen, Secretary

Incorporated 1884

STANDARD

ACCIDENT INSURANCE COMPANY
OF DETROIT, MICHIGAN.

LAMPING & COMPANY, Inc.,

General Agents,
250 Colman Bldg.

Seattle, Washington,
Phone Main 6222.

(Testimony of E. R. Voorhees.)

July 25, 1924.

E. R. Voorhies, Esq.
Morton,
Washington.

Dear Sir:

We acknowledge receipt of your July 23rd letter with reference to the Milligan insurance. I presume our letters crossed and that you had not received our declination of this business prior to writing your letter of the 23rd. In any event, we cannot handle additional insurance for Mr. Milligan and it is our decided preference to be relieved of the \$1200.00 policy that we are now carrying. Please advise.

Yours very truly,
LAMPING & COMPANY, Inc.

By E. LAMPING,

EL/hs.

General Agent.

1884—1924

The "Standard's" 40th Year of Growth and Experience.

[Endorsed]: No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

Q. When did you receive those letters, Mr. Voorhees?

A. The first one I received, the first letter there a copy of which you have, I received it Saturday morning after the fire.

Q. Then when did you receive the second letter,

(Testimony of E. R. Voorhees.)

the answer to your first letter, the original you handed me, the one dated July 25?

A. I am not positive whether it was—but I think it was Monday. It was either Saturday or Monday or Tuesday, not later than Tuesday. It was after the fire I know.

Q. And you say you received Mr. Lamping's first letter on the 23d after the fire on Saturday?

A. Yes, sir.

Q. Where were you on Friday, the day before the fire?

A. I was in a farming section about 15 miles south of Morton.

Q. About what time did you go over there?

A. Early in the morning.

Q. Early in the morning. Did you call for your mail before you went over there?

The COURT.—What is the purpose of this?

Mr. HULBERT.—To show the reason why he did not get it.

The COURT.—Do not cross-examine him. Leave that for the other side to do.

Q. (Mr. HULBERT.) Then what did you do? What time did you get back? A. Late at night.

Q. About what time? [71]

A. I should think 8 o'clock.

Q. About 8 o'clock? A. Yes, sir.

Q. Did you see Mr. Milligan immediately after the fire or shortly after the fire? A. I did.

Q. Where were you when you saw him?

A. On the street near the location of the hotel.

(Testimony of E. R. Voorhees.)

Q. Did any conversation take place between you at that time? A. Yes, sir.

Q. What did Mr. Milligan say and what did you say?

A. Mr. Milligan asked me if that insurance was in force.

Q. And what did you say?

A. I said, "I do not know; I hope so."

Q. Was there any further conversation between you at that time than that?

A. Not that I remember of.

Q. Did you see him Friday night?

A. No, sir.

Q. You did not see him at all Friday night?

A. No, sir.

Q. Your first conversation with reference to any additional insurance was on Tuesday, you say, and did you see him again Wednesday night?

A. I did.

Q. What was said then?

A. He asked me if that insurance was in force.

Q. Wednesday night? A. Yes.

Q. And what did you tell him? [72]

A. I told him I thought so, but I did not know until I heard from Seattle.

Q. At that time had you heard from Seattle?

A. I had not.

Q. Did you at any time tell Mr. Milligan that he was covered? A. No, sir.

Q. Was the word "covered," ever used between you and Mr. Milligan?

(Testimony of E. R. Voorhees.)

A. Not to my recollection or knowledge.

Mr. HULBERT.—You may cross-examine.

Cross-examination.

(By Mr. SAM A. WRIGHT.)

Q. Now, you say you talked with Mr. Milligan Wednesday night? A. Yes, sir.

Q. Is that true? A. Yes, sir.

Q. And you told him you thought that his insurance was in force? A. Yes, sir.

Q. And you had talked with Mr. Lamping Wednesday morning, had you not? A. Yes, sir.

Q. Why did you tell him Wednesday evening you thought his insurance was in effect if your conversation with Mr. Lamping on Wednesday morning had already taken place, the conversation that you have referred to over the telephone?

A. We had— [73]

Q. What made you tell him Wednesday evening after you had talked with Mr. Lamping Wednesday morning, as you have testified, that you thought his insurance was in effect Wednesday evening?

A. I had no conversation to lead me to say otherwise.

Q. You had talked with Mr. Lamping Wednesday morning over the telephone? A. Yes, sir.

Q. Did you not testify that Mr. Lamping Wednesday morning told you he did not want that insurance?

The COURT.—No.

A. No, sir, I have not.

(Testimony of E. R. Voorhees.)

Q. (Mr. SAM A. WRIGHT.) You did not so testify? A. No, sir.

Q. But did you tell him Wednesday evening you thought this insurance was in effect?

A. Yes, sir, I told him I hoped so.

Q. You did write a \$2,000 policy in addition to the \$1200 policy? A. Yes, sir.

Q. And you did not receive any instructions from Mr. Milligan to write that \$2,000 policy, did you; Mr. Milligan did not instruct you to write that policy, did he? A. He did.

Q. When was that policy written?

A. I think the first day of June.

Q. It was written, as a matter of fact, at the same time that you wrote this other policy of \$1,200, was it not? A. I think the same day.

Q. It was written as of June 1st, and you countersigned it [74] on June 3d, that is correct, is it not?

A. I do not know the date I countersigned it.

Q. It was prepared at the same time this other policy, which was prepared, which is Plaintiff's Exhibit 7, that is correct, is it not, the \$2,000 policy was prepared at the same time you prepared that policy? A. I think so.

The COURT.—I think the witness said so.

Mr. SAM A. WRIGHT.—I had not heard his answer.

Q. (Mr. SAM A. WRIGHT.) Is it not a fact when Mr. Milligan told you about that policy he told you he was not able to take that policy at that

(Testimony of E. R. Voorhees.)

time, that he had never ordered it, he told you that, did he not?

Mr. HULBERT.—I object to that as not proper cross-examination.

The COURT.—You showed that ti was cancelled, and he can show the reason why it was cancelled.

(Last question read.)

A. No, sir.

Q. He did not? A. No, sir.

Q. Did you ever deliver it to Mr. Milligan?

A. I do not think—I am sure I did not.

Q. You cancelled it July 15th?

A. That is what my record shows.

Q. Did you give Mr. Milligan any notice of that cancellation? A. He asked me to cancel it.

Q. He asked you to cancel that policy on July 15? A. Yes, sir.

Q. I want to call attention to the time you wrote this first [75] policy, or saw him about the first policy. You went to the hotel with Steve Bergen?

A. Yes, sir.

Q. Is it not a fact at that time you told Mr. Milligan in addition to the \$1,200 policy that he should have \$10,000 insurance? A. No, sir.

Q. And is it not a fact that this conversation took place in Steve Bergen's presence, that Mr. Milligan told you he appreciated he ought to have more insurance, but he could not afford to take care of it at that time, and that you should just write the \$1,200 policy, and no more? A. No, sir.

Q. That is not true? A. No, sir.

(Testimony of E. R. Voorhees.)

Q. You spoke about a \$1,200 chattel mortgage on the furniture, that was not a mortgage that Mr. Milligan had given? A. I understand not.

Q. Now was the mortgage which was on the property, the \$12,000 mortgage, that was not his mortgage. You knew he had not given that mortgage? A. I know it by hearsay is all.

Q. You knew also the insurance outside of the \$1,200 policy that you had written had been written on the property at the time Mr. Milligan bought the property?

A. I cannot say I did know it at that time.

Q. You discussed with Mr. Milligan, that matter, did you not? [76] A. Later.

Q. Now, you know Mr. W. T. Fletcher who testified here a few minutes ago? A. Yes, sir.

Q. Do you know him quite well? A. Yes, sir.

Q. Do you remember a conversation which you had with him on July 22d, in the evening immediately after you talked to Mr. Milligan about this insurance? A. I may have had a talk with him.

Q. You had one; and you went to his door and found him in the office, did you not, and you talked with him in the office, on July 22d, 1924, at about the hour of about 8 o'clock P. M., did you not?

A. I do not remember that.

Q. You do not remember that? A. No, sir.

Q. As a matter of fact did you not go to his office at that time, and at that place and tell Mr. Fletcher in a boisterous way that you were getting insurance in Morton— A. No, sir.

(Testimony of E. R. Voorhees.)

Q. —over the head and all around Mr. Caruthers, who was writing insurance there—

Mr. HULBERT.—I object to that as incompetent and immaterial.

The COURT.—The objection is sustained.

Mr. SAM A. WRIGHT.—I am laying the foundation for impeachment.

The COURT.—You can lay the foundation directly [77] for impeachment on anything that is proper in this matter.

Q. (Mr. SAM A. WRIGHT.) Did you not tell Mr. Fletcher at that time that you had insured Mr. Milligan that evening for \$10,000?

A. No, not to my knowledge.

Mr. HULBERT.—I object to that, your Honor.

The COURT.—It is answered. The objection is overruled.

Q. (Mr. SAM A. WRIGHT.) You did not?

A. No, sir.

Q. You say you know Steve Bergon?

A. Yes, sir.

Q. Very well? A. Yes, sir.

Q. You felt a little uneasy after this fire up there, did you not?

Mr. HULBERT.—I object to that as calling for a conclusion of the witness.

The COURT.—The objection is overruled; this is cross-examination.

Q. (Mr. SAM A. WRIGHT.) You got uneasy after this fire, about your liability? A. No, sir.

Q. Did you not go to Chehalis and consult an at-

(Testimony of E. R. Voorhees.)

torney about it? A. About what?

Q. About whether you might become involved personally in this transaction?

A. I do not remember just when I went to Chelalis. [78]

Q. Do you remember a conversation that took place on the streets of Morton Friday morning, August 1st, at about 10:30 o'clock, between you and Mr. Bergon and Mr. Milligan in regard to this fire, and in regard to your insuring Mr. Milligan in this transaction? A. No, sir.

Q. I will ask you to state whether or not you did not go to Mr. Bergon on Thursday, July 31, and ask him to intercede with Mr. Milligan in an effort to get a release so far as you were personally concerned?

Mr. HULBERT.—I object to that.

A. I do not remember any such conversation.

Mr. HULBERT.—I object to that on the ground that it is incompetent, irrelevant and immaterial, and not proper cross-examination. He cannot lay the foundation for impeachment on an immaterial matter.

(Last question read.)

The COURT.—The plaintiff's theory is that this witness undertook to insure the plaintiff for and on behalf of the defendant, and the defendant says he had no authority to do that. If he went and asked for a release it might be under your insurance act, material, as showing his interest and as affecting his credibility. The question is proper and he

(Testimony of E. R. Voorhees.)

may answer. The objection is overruled.

Mr. HULBERT.—Note an exception.

(Last question read.)

A. I do not remember it. [79]

Q. (Mr. SAM A. WRIGHT.) Now, were you not talking with Mr. Bergon Friday morning, August 1st, about the matter as Mr. Milligan was going by, and was not Mr. Milligan stopped by Mr. Bergon and called over to where you and he were engaged in the conversation? A. I do not remember it.

Q. And did not Mr. Milligan come over and did not this conversation take place; did not Mr. Bergon say to Mr. Milligan, "Are you going to hold, or attempt to hold, Mr. Voorhees, in this matter, Mr. Milligan?" And did not Mr. Milligan make this response, "Why, no, it is his insurance company that I am seeking to hold," and then did not Mr. Bergon turn to you and say "Mr. Voorhees, you insured the man, did you not?" and did you not say, "Certainly, absolutely, I insured him. I insured him in the same company as the small policy." Did you not say that or those words, in substance?

A. No.

Mr. HULBERT.—I object to that as being wholly incompetent and immaterial and not binding on this insurance company.

The COURT.—It is for the purpose of impeaching this witness. They have a right to show he admitted he did, not as proof that he did, but to affect his statement that he did not, if the jury thinks it does. The objection is overruled.

(Testimony of E. R. Voorhees.)

Q. (Mr. SAM A. WRIGHT.) This letter of July 23d, from Lamping & Company, you say you did not receive until the Saturday morning after the fire? [80]

A. The Saturday morning after the fire.

Q. The letter was dated July 23d, and you said you received it on Saturday, the 26th?

A. Yes, sir.

Q. The letter which they wrote you or purported to have written you, dated July 25, you did not receive, you do not think, until Monday or Tuesday of the following week; is that correct?

A. I am not positive, but I think that is true.

Q. In any event you never received either letter until after this fire? A. No, sir.

Q. And therefore you did not communicate the contents of that letter, or either of those letters to Mr. Milligan? A. Verbally.

Q. When?

A. I do not remember the exact date, but it was after that.

Q. I will ask you to state whether or not it was not on the Monday after the fire when Mr. Milligan came up to see you from Seattle?

A. I do not remember.

Q. You do not remember? A. I do not.

Q. Is not your memory very good, Mr. Voorhees?

A. Usually good.

Q. Do you not recall any conversation that you had with Mr. Milligan about these letters?

A. No, sir. [81]

(Testimony of E. R. Voorhees.)

Q. I will ask you to state if this did not take place in your office on the Monday following the fire, at Morton, did not Mr. Milligan meet you on the street and you called him to your office and he told you he had been to see Lamping & Company and Mr. Lamping told him that he had written that they would not insure him, that they did not desire you to write that insurance, they said they had written you about that Saturday morning, and did you not tell him you had just received the letter, but you did not ask Lamping & Company what insurance you should write, but you wrote your own insurance?

Mr. HULBERT.—I object to that as being incompetent, irrelevant and immaterial, and improper.

The COURT.—For the same purpose, for the purpose of impeachment, the objection is overruled.

A. I do not remember.

Q. You do not remember? A. No, sir.

Q. Would you say that conversation did not take place? A. I would not say anything about it.

Q. You were at the hotel Friday evening before the fire? A. No, sir.

Q. You were not? A. No, sir.

Q. You say you know Mr. Fletcher?

A. Yes, sir.

Q. He has lived there as long as you have, has he not? A. I do not know.

Q. Do you tell this jury you were not in that hotel Friday [82] evening, July 25th, and engaged in a conversation with Mr. Milligan?

(Testimony of E. R. Voorhees.)

A. I was not.

Q. At the time when Mr. Fletcher was present and sitting in the lobby? A. No, sir, I was not.

Q. Mr. Fletcher was there in the merchandise business, was he not?

The COURT.—He knows him. There is no use talking about that.

Q. (Mr. SAM A. WRIGHT.) You spoke about you did not deliver policies until you collected the premiums on them. You delivered the \$1,200 policy, did you not, without collecting the premium.

A. No, sir.

Q. You did not? A. No, sir.

Q. You did not require Mr. Bergon, the mortgagee, to guarantee the payment of that premium?

A. I asked him something about it.

Q. You took the precaution to have the premium on that policy guaranteed by Mr. Bergon?

A. I think I had some talk with him about it.

Q. You said that on Tuesday evening you spoke to Mr. Milligan about the rubbish that was around his hotel? A. Yes, sir.

Q. But the same day or the next day you wrote to Lamping & Company, the letter which has been introduced in evidence here, did you not?

A. Yes, sir. [83]

Q. As a matter of fact you told Mr. Milligan on Tuesday evening, did you not, that if he would make some changes and alterations that you objected to, that you would give him a lesser rate on his insurance? A. No, sir.

(Testimony of E. R. Voorhees.)

Q. You did not? A. No, sir.

Mr. SAM A. WRIGHT.—I think that is all.

(The Court thereupon admonished the jury as to their duties during the recess of the court, and a recess was taken until the hour of 2 o'clock P. M. June 3, 1925, at which time all parties being present as heretofore, the trial was resumed as follows, to wit:)

Mr. SAM A. WRIGHT.—I would like to ask Mr. Voorhees a few more questions on cross-examination, if I may.

E. R. VOORHEES, recalled to the witness-stand, as a witness on behalf of the defendant, testified as follows:

Cross-examination.

(By Mr. SAM A. WRIGHT.)

Q. Mr. Voorhees, how many typewriters have you in your office at Morton? A. Two. [84]

Q. Have you a stenographer?

A. Not at the present time.

Q. Handing you Defendant's Exhibit "B," was that letter written by you in your office?

The COURT.—Are you familiar with it?

A. Yes, I have read it all through, but as far as I can see, it was written by me.

Q. Handing you Defendant's Exhibit "A," was that written by you in your office? A. Yes, sir.

Q. You wrote that letter yourself, did you?

A. Yes, I think I did, as I remember it.

Q. I am speaking of Defendant's Exhibit "A."

A. Let me see it again, please.

(Testimony of E. R. Voorhees.)

(Exhibit "A" was handed the witness.)

A. Yes, sir.

Q. You wrote that yourself? A. Yes, sir.

Q. Will you tell the jury what the initials E. R. V./MS mean? A. E. R. V. are my initials.

Q. What does the M. S. mean? A. Myself.

Q. That is the designation which you placed on that letter? A. Yes, sir.

Q. Did you not place any such identification upon Defendant's Exhibit "B," did you?

A. It seems not.

Q. Both of those letters were written upon the same typewriter? [85] A. I do not know.

Q. You say in this letter, Defendant's Exhibit "A," that the reason you had not returned this check to Mr. Milligan was that you did not know what his address was? A. Yes, sir.

Q. Do you recall about the middle of September Mr. Milligan and his wife being in Morton?

A. I do not?

Q. You do not recall it?

A. He was in Morton at one time, but I do not remember the time.

Q. Do you remember talking with Mrs. Milligan at that time? A. I do not.

Q. You said nothing to her, or to either of them at that time, about returning this certified check?

A. I do not remember.

Q. When you received this certified check for \$500, do you recall advising your friend Bergon about it? A. I may have, I do not recall it.

(Testimony of E. R. Voorhees.)

Q. Did you tell him when you received that check you were going to deduct \$75, the amount of your commission, and send the rest to the company?

A. I do not remember any such talk.

Q. You do not remember it? A. No, sir.

Q. Would you say no such conversation took place?

A. I will say I do not think any such conversation took place. [86]

Mr. SAM A. WRIGHT.—That is all.

Redirect Examination.

(By Mr. HULBERT.)

Q. Regarding that \$2,000 policy, Mr. Voorhees, that there has been so much talk about, was that policy written in the defendant National Liberty Insurance Company? A. No, sir.

Q. Did the National Liberty Insurance Company, the defendant in this case, have anything to do with that \$2,000 policy that they have talked about here?

A. No, sir.

Q. What company did you write that in?

Mr. ELIAS A. WRIGHT.—I think that is immaterial.

The COURT.—I suppose the jury has been assuming the same thing that I have about that matter. He may answer.

A. It was written in the North American and British Mercantile.

Q. (Mr. HULBERT.) That North American British Mercantile Company is one of Mr. Lamping's companies? A. Yes, sir.

(Testimony of E. R. Voorhees.)

Q. And even in that company, I will ask you whether or not you wrote the policy or where it was prepared?

A. Mr. Lamping wrote the policy, or it was written in his office, I mean.

Q. And it was prepared and sent down to you?

A. Yes, sir. [87]

Q. And you countersigned it as local agent after it had reached you? A. Yes, sir.

Q. During any of the time of these negotiations between you and Mr. Milligan was there ever anything said about any company, any particular insurance company? A. No, sir.

Q. Was the National Liberty Insurance Company or any other company mentioned in your negotiations with him? A. No, sir.

Q. Did you know at the time that you took the matter up by telephone or in writing, with Lamping & Company, even if Lamping & Company would have accepted it, did you know then, in what company this insurance would be written

A. I did not.

Q. How many companies do you represent down there? A. Three.

Q. You represent another company in which you have the policies, that you can write, do you not?

A. Yes, sir.

Q. Does Lamping & Company have anything to do with that company? A. No, sir.

Q. What is the name of it?

A. The Franklin Fire Insurance Company.

(Testimony of E. R. Voorhees.)

Q. And you have policies there in that company that you do write?

The COURT.—He has answered the question.

A. Yes, sir. [88]

Q. (Mr. HULBERT.) You had those at the time of the fire too, didn't you? A. Yes, sir.

Q. And at the time of your negotiations with this man? A. Yes, sir.

Mr. HULBERT.—I think that is all.

Recross-examination.

(By Mr. SAM A. WRIGHT.)

Q. Did you not explain to Mr. Milligan on Monday, after this fire, that this particular company, the National Liberty Insurance Company, was the only company you could write such a risk as that in?

A. No, sir.

Q. As that hotel? A. No, sir.

Q. Did you not sit down and talk with him and explain the details about that? A. No, sir.

(Witness excused.) [89]

TESTIMONY OF JOSEPH T. BRENNAN, FOR DEFENDANT.

JOSEPH T. BRENNAN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HULBERT.)

Q. State your full name to the jury.

A. Joseph T. Brennan.

(Testimony of Joseph T. Brennan.)

Q. And what is your business? A. Insurance.

Q. Where are you employed?

A. At Seeley & Company.

Q. How long have you been with them?

A. About a year and a half.

Q. In what capacity?

A. Until the first of this year I have been in charge of the fire insurance department.

Q. How long were you in charge of that department? A. A year and 5 months.

Q. Did you ever see Mr. W. A. Milligan, sitting here? A. Yes, sir, I recall the gentleman.

Q. Do you remember the time of the Morton fire?

A. Yes, sir, I remember reading about it in the paper.

Q. Where did you see Mr. Milligan?

A. At our office in the Coleman Block.

Q. When?

A. On the Monday following the fire.

Q. Did you have a conversation with him at that time? A. Yes, sir. [90]

Q. Had you ever met him before?

A. No, sir, never.

Q. Did he introduce himself to you?

A. Yes, sir.

Q. And tell me what the conversation was between you and Mr. Milligan at that time.

A. Mr. Milligan came to the counter and I proceeded to wait on him, and he said he wished to report a fire loss in the Washington State Under-

(Testimony of Joseph T. Brennan.)

writers, one of the companies we represented. I did not think we had any insurance at Morton, and he said that the town of Morton had been entirely destroyed and he had a \$10,000 policy in the Washington State Underwriters. I looked up our records and I could find no such policy. He insisted it was in the Washington State Underwriters, and so I looked very carefully again, and I could not find anything, and he said, "I am positive that I am right, because it is the Washington State Underwriters, and it was written through Mr. Voorhees, your agent." The name was not familiar to me. However, I wanted to check it up as well as I could and I looked up the records of the agents and I could find no such agent, and I said, "Mr. Milligan, I am sure you are mistaken."

Q. Did he say anything at that time about the National Liberty Insurance Company, the defendant in this case? A. No.

Q. Was that company mentioned?

A. No company was mentioned other than the Washington State Underwriters.

Q. Did he make any inquiry at that time as to the standing [91] of the National Liberty Insurance Company, or any other fire insurance company? A. No, sir.

Mr. HULBERT.—That is all.

Cross-examination.

(By Mr. SAM A. WRIGHT.)

Q. Was a man at that time connected with your company named Crawford? A. Yes, sir.

(Testimony of George M. Crawford.)

Mr. HULBERT.—He is here. I will put him on the stand in a moment.

Q. Was he present?

A. He came to the counter when I was in about the middle of my conversation with Mr. Milligan, when Mr. Crawford came to the counter.

(Witness excused.) [92]

TESTIMONY OF GEORGE M. CRAWFORD,
FOR DEFENDANT.

GEORGE M. CRAWFORD, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HULBERT.)

Q. State your name in full, please.

A. George M. Crawford.

Q. What is your business?

A. Secretary of Seeley & Company, general insurance agents.

Q. And in what capacity are you there?

A. I have general supervision of the secretarial work of the office.

Q. Is that company connected in any way with Lamping & Company? A. No, sir.

Q. And it is not connected in any way with the National Liberty Insurance Company?

A. No, sir.

Q. They are in business here in this city?

A. Yes, sir.

(Testimony of George M. Crawford.)

Q. Do you remember of seeing Mr. W. A. Milligan in the office there at any time?

A. He was in there last summer, yes, sir.

Q. Do you remember what day it was?

A. I do not remember the exact date, but it was just after the Morton fire. I know it was last summer some time.

Q. Had you known Mr. Milligan before?

A. Yes, sir, I knew him in the summer of 1922. I think it [93] was 1922, or 1923.

Q. Did you hear a conversation between Mr. Milligan on that occasion, and Mr. Brennan, of your office? A. Yes, sir.

Q. State what you heard in connection with that conversation.

A. My desk was about as far from the counter as you are from me, and I overheard the entire conversation, and knowing Mr. Milligan, I went to the counter and spoke to him.

Q. Tell what was said.

A. I heard him tell Mr. Brennan of the fire, and stating he had a \$10,000 policy in the Washington State Underwriters, and Mr. Brennan told him he could find no record of any such policy, and I heard Mr. Brennan state that it might be the Washington Underwriters, which was represented by Mr. Lamping.

Q. Was any mention made of the standing of the Washington Underwriters, or the National Liberty Insurance Company? A. No, sir.

Q. Were you in a position where you could have

(Testimony of George M. Crawford.)

heard if there had been such a conversation?

A. Yes, sir.

Q. Was the National Liberty Insurance Company mentioned at all? A. Not in my presence.

Mr. HULBERT.—You may cross-examine. [94]

Cross-examination.

(By Mr. SAM A. WRIGHT.)

Q. What time of day was that?

A. I would not say exactly, maybe just before noon or just after, I do not remember the exact time of day.

(Witness excused.)

TESTIMONY OF CLAUD MORRIS, FOR DEFENDANT.

CLAUD MORRIS, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HULBERT.)

Q. What is your name? A. Claud Morris.

Q. Where do you live? A. At Morton.

Q. How long have you lived there?

A. About 13 years.

Q. And what is your business? [95]

A. Hardware business.

Q. Do you remember the fire that occurred down there? A. Decidedly.

Q. You were in business at that time there?

(Testimony of Claud Morris.)

A. Yes, sir.

Q. In the hardware business?

A. I was managing the hardware business there.

Q. And your place burned? A. Yes, sir.

Q. Do you know Mr. Voorhees? A. Yes, sir.

Q. Do you know Mr. Milligan? A. I do.

Q. Do you remember meeting them, or either of them on the street Saturday morning after the fire?

A. Yes, sir.

Q. Did you overhear a conversation between them? A. I did, a very short one.

Q. What was it?

A. Well, Mr. Voorhees and I were standing on the corner, just met there, and were talking, and Mr. Milligan stepped up and asked Mr. Voorhees if he thought the insurance of his was all right, and Mr. Voorhees said, "Yes, I think it is, although I will have to verify it by wire."

Q. Did he say anything about—did he use the words "in force," "insurance in force," at any time?

A. I could not recall definitely in regard to the exact words used.

Q. You have stated as nearly as you can what was said? [96] A. Yes, sir.

Mr. HULBERT.—That is all.

Cross-examination.

(By Mr. SAM A. WRIGHT.)

Q. You are not sure of the language that was used, at all, are you?

(Testimony of Claud Morris.)

A. Not the exact words, no, just the general impression.

Q. You would not say that Mr. Milligan did not say to Mr. Voorhees, "Will there be any question about that insurance of mine?" they might have used that language? A. I think not.

Q. You think not? A. Yes, I think not.

Q. You are sure Mr. Voorhees said he would have to verify it by wire? A. Yes, sir.

Q. You talked with Mr. Milligan last week, I think, up there, did you not, and you were not certain at that time, of this conversation, were you?

A. I was certain of a portion of it, just as I have stated it.

(Witness excused.) [97]

TESTIMONY OF EVERETT LAMPING, FOR DEFENDANT.

EVERETT LAMPING, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HULBERT.)

Q. What is your name? A. Everett Lamping.

Q. What is your business? A. Insurance.

Q. You are connected with what company?

A. Lamping & Company.

Q. And Lamping & Company is the general agent of the National Liberty Insurance Company?

(Testimony of Everett Lamping.)

A. Yes, sir.

Q. And it was through your agency that Mr. Voorhees was appointed agent at Morton for your company?

A. Yes, sir.

Q. Do you remember Mr. Voorhees taking up this question of this insurance with you?

A. Yes, sir, I recall it.

Q. When was that?

A. On the morning of July 23d, 1924.

Q. And how did he take it up with you?

A. By telephone.

Q. What had been your practice and the practice of Mr. Voorhees, representing your companies, as to the writing or acceptance of insurance contracts?

A. Any business he solicited had to be submitted to my [98] office for reception or rejection.

Mr. ELIAS A. WRIGHT.—We object to that and move that the answer be stricken, on the ground that the license granted this man speaks for itself, and any private instructions between these parties would not be binding upon the plaintiff.

Mr. HULBERT.—The license does not so state. The license is in evidence. He was given a license as agent. I propose to show here the course of dealings between these parties, as showing the improbability of Mr. Voorhees doing what the plaintiff says he did, as meeting the question as to whether or not this was submitted to Mr. Lamping.

The COURT.—That can be the only purpose of it, as a circumstance, if the jury gives it credit, to determine whether or not at this particular time

(Testimony of Everett Lamping.)

and occasion, Mr. Voorhees did engage, with Mr. Milligan to insure him outright, as Mr. Milligan says he did. Any secret instructions from this general agent to Mr. Voorhees, not brought to the notice of Mr. Milligan, would not bind him. The theory of the defence is that Mr. Voorhees did not have any authority to make the contract as Mr. Milligan says he did, and the jury may consider that as a circumstance in determining that question in whether they will believe Mr. Milligan rather than Mr. Voorhees. [99] For that limited purpose I think it is competent, and the objection will be overruled. The motion to strike is denied.

Q. Now, Mr. Lamping, upon this particular occasion was that custom pursued? A. Yes, sir.

The COURT.—As far as he knows.

Q. (Mr. HULBERT.) I will ask you whether or not Mr. Voorhees did submit to you the question of writing \$10,000 insurance for Mr. Milligan?

A. He did, and by telephone on July 23d, 1924.

Q. In that conversation did Mr. Voorhees say to you, "I have placed \$10,000 worth of insurance," and he wanted you to send him the policy, that he had run out of policies, and wanted you to send him policies, so he could write it?

A. No, sir, no such conversation occurred.

Q. As a matter of fact, has Mr. Voorhees ever had any blank policies in his possession?

A. At no time during the entire service as an agent for the company. My three companies he never had a policy for any one of the three.

(Testimony of Everett Lamping.)

Q. In that conversation over the telephone what was said?

Mr. ELIAS A. WRIGHT.—The materiality of that. That conversation that may have occurred would not have any effect that I can see. He said that conversation did not occur and I can see no materiality to any other conversation.

The COURT.—He has a right to give his version of [100] it, just the same, to see whether or not the jury would believe the young girl, or whether she may have become confused by some similitude. The objection is overruled.

A. Mr. Voorhees called me over the phone and stated that Mr. Milligan wished insurance in the amount of \$10,000, and he told me he wished to divide it \$6,000 on the building and \$4,000 on the contents, and I inquired what other insurance was on the building, and he told me \$15,000, and due to the fact that the \$15,000, plus \$6,000, appeared to me to be very high, a very high amount of insurance to carry, I told Mr. Voorhees we would not accept it, nor would we cover it, and he then inquired if I would look into it and let him know, and I told him I would look into it and see what could be done, and would write him.

Q. Did you write him?

A. Immediately after the telephone conversation I went out in the main room of my office and looked up to see.

The COURT.—Did you write him?

A. And I wrote him this letter on July 24th.

(Testimony of Everett Lamping.)

Q. Is this letter, Defendant's Exhibit "C," the one you wrote?

A. Yes, sir, that is the exact copy of the letter.

Q. And you also received a letter, did you not, Defendant's Exhibit "B," from Mr. Voorhees?

A. Yes, sir.

Q. Now, then, did you answer Mr. Voorhees' letter, exhibit "B"? [101]

A. Yes, sir, on July 25, 1924.

Q. Is this Defendant's Exhibit "D" the letter you wrote him then? A. Yes, sir.

Q. And you mailed it to Morton? A. Yes, sir.

Q. I will ask you whether or not this form of insurance is the New York standard form of insurance that is used by the National Liberty Insurance Company in this state?

A. It is used by the National Liberty Insurance Company and all other companies writing fire insurance.

Mr. HULBERT.—I will offer it in evidence.

Mr. SAM A. WRIGHT.—We object to it as being immaterial.

The COURT.—I think not. It is the standard form required by statute, and the objection will be overruled.

(Blank insurance policy was then admitted in evidence as Defendant's Exhibit "E.")

DEFENDANT'S EXHIBIT "E."

8592. Deft. Ex. "E." Admitted.

STANDARD FIRE INSURANCE POLICY

Stock Company

No. 50504

Specimen

WASHINGTON UNDERWRITERS

By This Policy of Insurance

the

NATIONAL LIBERTY INSURANCE CO. OF
AMERICA

Amount \$ _____ Rate _____ Premium \$ _____

In Consideration of the Stipulations herein named
and of

_____ Dollars Premium,

Does Insure _____

_____ for the term of _____

from the _____ day of _____ 19 _____, at noon,
(Standard Time)

to the _____ day of _____ 19 _____, at noon,
(Standard Time)

against all direct loss or damage by fire, except as
hereinafter provided, to an amount not exceeding

_____ Dollars,

to the following described property while located
and contained as described herein, and not else-
where, to wit:

This policy is made and accepted subject to the
foregoing stipulations and conditions, and to the

following stipulations and conditions printed on back hereof, which are hereby specially referred to and made a part of this Policy, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto; and no officer, agent or other representative of this Company shall have power to waive any provision or condition of this Policy except such as by the terms of this Policy may be the subject of agreement endorsed hereon or added hereto; and as to such provisions and conditions no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the insured unless so written or attached.

Provisions required by law to be stated in this policy.—This policy is in a stock corporation.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid until countersigned by the duly authorized Agent of the Company at _____.

WM. G. ARMSTRONG,

Secretary.

Specimen

CHARLES H. COATES,

President.

Specimen

Countersigned at _____, this _____ day of _____ 19—

_____ Agent.

This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate, and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swear-

ing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after the loss.

This entire policy, unless otherwise provided by agreement endorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering or repairing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if

this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used or allowed on the above described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, Greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine, or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard (which last may be used for lights and kept for sale according to law, but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as

a result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss of awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruptions of business, manufacturing processes, or otherwise; nor, for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be canceled at any time at the

request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be cancelled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it shall retain only the *pro rata* premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so endangered by fire as to require a removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more locations, be

liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumberances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a

creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained the loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of a disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any for-

feiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for re-insurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim shall be sustainable in any court of law or equity until after full compliance by the in-

sured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached, or appended hereto.

ASSIGNMENT OF INTEREST BY INSURED

The interest of _____ as owner of the property covered by this Policy is hereby assigned to _____ subject to the consent of the Washington Underwriters of the National Liberty Insurance Company of America.

(Signature of Insured)

Dated _____ 19—

Note.—To secure mortgagees, if desired, the policy should be made payable on its face to such mortgagee as follows: Loss, if any, payable to *John Doe*, mortgagee.

CONSENT BY COMPANY TO ASSIGNMENT OF INTEREST.

The Washington Underwriters of the National Liberty Insurance Company of America hereby consents that the interest of _____ as owner of the

property covered by this Policy be assigned to

_____ Agent
Dated _____ 19—

FORM FOR REMOVAL.

Permission is hereby granted to remove the property insured by this Policy to the _____ situate _____ and this Policy is hereby made to cover the same property in new locality, all liability in former locality to cease from this date.

Rate increased to _____% Additional Premium \$ _____

Rate reduced to _____% Return Premium \$ _____

Dated, _____ 19—

SHEET _____ BLOCK _____ No. _____

Standard Fire Insurance Policy. Stock Company. No. 50504. Washington Underwriters, New Specimen.

York. Policy of National Liberty Insurance Co. of America. Head Office 709 6th Ave., New York, N. Y. Assured. _____ Date _____ Expires _____ Amount \$ _____ Premium \$ _____ Rate _____ Property _____.

No. of Policy _____

No. of Renewal _____

Amount Insured _____

YEAR MO. DAY

Date of Cancel.,

“ Policy,

Time in force,

Premium Paid, \$ _____

“ earned at _____ rate, \$ _____

“ returned, \$ _____

If *pro rata*, state reason why:

(Testimony of Everett Lamping.)

Receipt for Return Premium

To be Signed by the Assured

—————Agency ————— 19—

In Consideration of

—— Dollars return premium, receipt of which is hereby acknowledged, this Policy is hereby cancelled and surrendered to the Company.

Assured.

[Endorsed]: No. 4681. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 31, 1925. F. D. Monckton, Clerk.

Mr. HULBERT.—You may cross-examination.

Cross-examination.

(By Mr. SAM A. WRIGHT.)

Q. The matter of this first policy for \$1,200 came to your notice, did it? [102]

A. It came to me by letter from Mr. Voorhees, submitted to my office for acceptance or rejection.

Q. And you say that that was accepted and the policy was written?

A. Written by myself, yes, sir.

Q. When was it prepared?

A. I imagine it was prepared the day it arrived in my office.

Q. Do you recall the date?

A. I do not recall the exact date.

Q. By the policy Mr. Milligan was insured from Monday, June 1, 1924, is that correct?

(Testimony of Everett Lamping.)

The COURT.—The policy will show for itself. Do not ask for something the record already shows.

Q. (Mr. SAM A. WRIGHT.) Did the policy provide it is not valid until countersigned by the agent at Morton, Washington? How was Mr. Milligan insured, if you know, between noon, June 1, and June 3, when the policy was countersigned?

A. The application for the insurance must have reached our office prior to June 1.

Q. Have you any such application?

A. We have an application form that we furnish the agents.

Q. Do you have any such application?

A. Did we in this case?

Q. Yes. A. As I recall it, yes.

Q. Then produce it?

A. I haven't it with me. [103]

Q. So that Mr. Milligan, as far as he was concerned, had nothing between June 1 and June 3 in the way of a policy of insurance?

A. I do not know whether this policy reached Mr. Milligan by June 1 or not.

Q. It could not have reached him before June 3, when it was countersigned at Morton, could it?

The COURT.—You are arguing with the witness.

Q. (Mr. SAM A. WRIGHT.) Who prepared the \$2,000 policy? A. In my office.

Q. Where is that policy?

A. The policy was cancelled and it is in the Home Office of the company. The policy has to go to the Home Office when it is cancelled.

(Testimony of Everett Lamping.)

Q. It was returned to you by Mr. Voorhees?

A. Yes, sir, and it reached our office July 17th.
Mr. SAM A. WRIGHT.—That is all.

Redirect Examination.

(By Mr. HULBERT.)

Q. Counsel asked you about whether or not Mr. Milligan would be covered within certain dates, if—is this true, if the insurance was accepted by you, then you would date the policy of the date of the application? A. Yes, sir.

Mr. SAM A. WRIGHT.—We object to that as leading and suggestive.

Mr. HULBERT.—I do not know how I could ask the [104] question any other way.

The COURT.—It is a matter of argument anyway. The objection is overruled.

Mr. HULBERT.—That is all. That is our case.
(Witness excused.)

The COURT.—Anything further?

Mr. SAM A. WRIGHT.—Yes, your Honor.

[105]

REBUTTAL.

TESTIMONY OF W. T. FLETCHER, FOR
PLAINTIFF (RECALLED IN REBUT-
TAL).

W. T. FLETCHER, recalled as a witness on behalf of the plaintiff, in rebuttal, testified as follows:

Direct Examination.

(By Mr. SAM A. WRIGHT.)

Q. I wish you to state whether or not you had a

(Testimony of W. T. Fletcher.)

conversation with Mr. Voorhees, at Morton, Washington, on July 22, 1924, at about 8 o'clock in the evening? A. I did.

Q. I will ask you to state at that time if Mr. Voorhees told you he had insured Mr. Milligan with the Morton Hotel, or words to that effect?

A. He did.

Mr. HULBERT.—I object to that, if it is intended for impeachment, as I remember Mr. Voorhees stated he did not remember any such conversation.

The COURT.—He said, “No,” and even if he did say, “I do not remember,” I would allow the impeachment.

Mr. HULBERT.—Then I object to his attempting to impeach the witness on a question that is wholly immaterial, and the company cannot be bound by it.

The COURT.—The objection is overruled.

[106]

Mr. SAM A. WRIGHT.—That is all.

Mr. HULBERT.—That is all.

(Witness excused.)

TESTIMONY OF STEPHEN J. BERGON, FOR
PLAINTIFF (IN REBUTTAL).

STEPHEN J. BERGON, called as a witness on behalf of the plaintiff, in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SAM A. WRIGHT.)

Q. What is your name?

(Testimony of Stephen J. Bergon.)

A. Steven J. Bergon.

Q. Where do you live? A. At Morton.

Q. Are you acquainted with Mr. Voorhees, the agent of the defendant company? A. Yes, sir.

Q. Do you know Mr. Milligan? A. Yes, sir.

Q. Do you recall going with Mr. Voorhees—in company with Mr. Voorhees, to Mr. Milligan's hotel on May 31, about a [107] matter of insurance?

A. Yes, sir.

Q. On that occasion did you hear Mr. Voorhees tell Mr. Milligan he ought to take \$10,000 additional insurance, or words to that effect?

Mr. HULBERT.—I object to that as wholly incompetent, irrelevant and immaterial, and certainly is not a proper question for impeachment purposes.

The COURT.—The Court differs with you. The objection is overruled.

A. I did.

Q. Did you hear Mr. Milligan's answer to that?

A. Yes, sir.

Q. What did Mr. Milligan tell him?

A. He told him he would take it up with him when he got settled; that he was a little unsettled and he would take the matter up later.

Q. Did you hear the conversation on the street at Morton, or did you participate in a conversation on the streets of Morton on Friday morning after the fire, August 1st, 1924, at about between 10 and 11 o'clock in the morning?

A. I would not be absolutely certain as to the date, but it was about that time.

(Testimony of Stephen J. Bergon.)

Q. It was after the fire? A. Yes, sir.

Q. And who were the parties present?

A. Mr. Milligan, Mr. Voorhees and myself.

Q. Did Mr. Voorhees at that time tell you, in the presence of Mr. Milligan that he had insured Mr. Milligan in [108] this defendant company, or words to that effect?

Mr. HULBERT.—I object to that. There was no foundation laid for this question, and upon the further ground it is incompetent, irrelevant and immaterial as to the defendant.

(Last question read.)

The COURT.—The objection is sustained. No foundation was laid for that.

Q. (Mr. SAM A. WRIGHT.) Did you have a conversation with Mr. Voorhees that morning?

A. Yes, sir.

Q. What was that conversation about?

Mr. HULBERT.—I object to that, what the conversation was about, calling on this witness—this is not their case in chief, and there is no foundation for this examination.

The COURT.—The objection is sustained.

Q. (Mr. SAM A. WRIGHT.) I will ask you to state, Mr. Bergon, if that was the occasion when Mr. Voorhees interceded with you to take up the matter with Mr. Milligan about getting a release from Mr. Milligan as to him, Mr. Voorhees?

Mr. HULBERT.—I object to that as suggesting something to this witness, that the witness has not testified to.

(Testimony of Stephen J. Bergon.)

The COURT.—He is apparently coming down to that part of the examination on the cross-examination of Mr. Voorhees which laid the foundation for impeachment. He may answer.

(Last question read.) [109]

A. Mr. Voorhies spoke to me and said he understood that Mr. Milligan was—

Mr. HULBERT.—That is not responsive.

The COURT.—Yes, answer if that is the time you had the talk? A. Yes, sir.

Q. (Mr. SAM A. WRIGHT.) On that occasion did you ask Mr. Voorhees if he had insured Mr. Milligan? A. I did.

Q. Or used language to that effect?

A. Yes, sir.

Q. Did he tell you that he had absolutely, that he had insured him in the same company as the small company you were *interest* in?

Mr. HULBERT.—I object to that as immaterial, and not proper impeachment.

The COURT.—You laid no foundation for any such question. The only thing you asked Mr. Voorhees about was whether or not he asked him to intercede with Mr. Milligan for Mr. Voorhees.

Q. (Mr. SAM A. WRIGHT.) Do you recall Mr. Voorhees telling you he had received a check from Mr Milligan—

The COURT.—Just a minute. The Court was in error. You may read that question and answer.

(The last question but one—line 12 this page—was read.)

(Testimony of Stephen J. Bergon.)

The COURT.—No, the question as asked was that of August 1st. You asked the witness Voorhees if he had talked with Mr. Bergon and if Mr. [110] Bergon had said to the plaintiff Milligan, “Do you intend to hold Mr. Voorhees,” and the plaintiff said “No, I will hold his company,” and then that this witness said to Mr. Voorhees, “You insured, him Milligan?” And Mr. Voorhees said, “In the same company as that of the small policy.” That was the question you put to Mr. Voorhees, and he answered it, “No.” You may put that question to this witness. Make your objection when it is asked. Proceed.

Q. (Mr. SAM A. WRIGHT.) In addition to that question you have testified to, Mr. Bergon, did you ask Mr. Voorhees on that occasion if he had insured Mr. Milligan?

A. I do not remember whether it was a direct question or implied, but we were talking about it, yes.

Mr. HULBERT.—I ask to have the answer stricken. That is not the character of testimony that ought to go in before this jury. He does not know whether it was implied.

The COURT.—That much may be stricken.

Q. (Mr. SAM A. WRIGHT.) What did Mr. Voorhees say?

A. In return to my talk he threw up his arms and said, “Yes, absolutely, he is protected, absolutely.”

Mr. HULBERT.—I ask that this be stricken

(Testimony of Stephen J. Bergon.)

as not being responsive.

Mr. SAM A. WRIGHT.—I think it is.

The COURT.—It will be stricken. That is not the question you asked the witness Voorhees, and is only here for the purpose of impeaching [111] and discrediting Mr. Voorhees. The motion is granted.

Q. (Mr. SAM A. WRIGHT.) Do you recall Mr. Voorhees exhibiting to you the check for \$500 which he had received from Mr. Milligan? A. Yes, sir.

Q. What did he tell you he was going to do with that check?

Mr. HULBERT.—I object to that on the ground no foundation has been laid for it.

The COURT.—I think there was. The impeaching question was put.

Q. (Mr. SAM A. WRIGHT.) I will ask you to state at the time he exhibited that check to you Mr. Bergon, if he did not say to you in substance or words to that effect, that he was going to keep that check and deduct \$75 of it for his commission, and remit the balance to the company?

A. He did not say the exact amount of his commission, but he said he would deposit that check to his credit and send them—he did not say how much.

Q. I cannot hear you.

A. I would not state it exactly that way. He said he was going to deposit that check to his credit and send his personal check to the company for the payment.

Mr. HULBERT.—I ask to have that stricken as not being proper under the rule.

Mr. SAM A. WRIGHT.—I think that is sufficient.

The COURT.—I think that is sufficiently near. The question asked Mr. Voorhees was if he did not tell this witness he intended to deduct [112] \$75 from that check for his commission and send the balance to the company. This witness said he did not put it quite that way, but that he was going to deposit the check to his credit and send the amount to his company in his own check.

(Witness excused.)

TESTIMONY OF W. A. MILLIGAN, IN HIS OWN BEHALF (RECALLED IN REBUTTAL).

W. A. MILLIGAN, the plaintiff, recalled as a witness in his own behalf in rebuttal, testified as follows:

Direct Examination.

(By Mr. SAM A. WRIGHT.)

Q. During any of these negotiations with Mr. Voorhees, did he ever tell you he would have to submit the matter to Lamping & Company?

A. He did not.

Q. When did you first hear of Lamping & Company in connection with this insurance company?

A. The morning after the fire. [113]

Q. Now, this \$2,000 policy that was written at the

(Testimony of W. A. Milligan.)

time the \$1,200 policy was written—did you see that policy? A. I did.

Q. Was it ever delivered to you? A. No, sir.

Q. Where did you see it?

A. In Mr. Voorhees' office.

Q. Did you ever order that policy?

A. I did not.

Q. Did he send you—

Mr. HULBERT.—He testified to that in chief.

Mr. SAM A. WRIGHT.—I do not recall that he did.

The COURT.—I think so.

Q. (Mr. SAM A. WRIGHT.) Did you ever order it cancelled? A. Yes, sir.

Q. I mean the \$2,000 policy? A. Yes.

Q. When was that?

A. It was about 5 days after he wrote it.

Q. How did that come about?

A. He sent me a bill for \$160 for \$3,200 worth of insurance, and I went over to see him about it.

Q. You had not ordered that policy?

A. No, sir.

Q. Do you recall a conversation you had with Mr. Voorhees in his office the Monday after the fire? A. Yes, sir.

Q. That was after you had been to Lamping & Company's office? A. Yes, sir. [114]

Q. Did he exhibit to you a letter at that time which he had just received from Lamping & Company? A. Yes, sir.

Q. Handing you Defendant's Exhibit "B," which

(Testimony of W. A. Milligan.)

purports to be a copy of a letter dated July 23, 1924, do you know whether that is a copy of the letter? A. It is not.

Q. Handing you Defendant's Exhibit "D," I will ask you to state whether or not that is the letter?

A. No.

Q. Did he tell you, on that occasion, or did you tell him on that occasion, that Lamping & Company had told you that they had told him, or written him they did not want him to write this insurance?

Mr. HULBERT.—I object to that as not being proper rebuttal.

Mr. SAM A. WRIGHT.—I am satisfied I laid the foundation for that, and that it is proper impeachment.

Mr. HULBERT.—It is certainly not impeachment.

Mr. SAM A. WRIGHT.—I asked Mr. Voorhees if that conversation did not take place in his office.

(Last question read.)

The COURT.—On the record they wrote him they did not want him to write that insurance. That is in the letters themselves. I do not remember any such question. You started to ask Mr. Voorhees something about a conversation on Monday morning, and he interrupted you, and it was broken off and you went to the letters [115] and asked him if he had written Exhibits "A" and "B." I remember no such question, and I do not think it is material. The objection is sustained.

Q. (Mr. SAM A. WRIGHT.) Mr. Voorhees has

(Testimony of W. A. Milligan.)

testified he told you on Wednesday night, July 23, that he thought that your insurance was in force, did he ever tell you any such thing?

A. He did not.

Q. Were you and your wife in Morton in the middle of September, 1924? A. Yes, sir.

Q. And you saw Mr. Voorhees on that occasion?

A. I did.

Q. Was that after you had sent your check to him for \$500? A. Yes, sir.

Q. Did you discuss it with him?

A. No, sir, I did not.

Mr. SAM A. WRIGHT.—I think that is all.

Mr. HULBERT.—No questions.

(Witness excused.) [116]

TESTIMONY OF MRS. IDA MILLIGAN, FOR
PLAINTIFF (IN REBUTTAL).

Mrs. IDA MILLIGAN, called as a witness on behalf of the plaintiff, in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SAM A. WRIGHT.)

Q. Your first name? A. Ida.

Q. You are the wife of W. A. Milligan, the plaintiff in this action? A. Yes, sir.

Q. Do you recall a trip to Morton, you and Mr. Milligan made after this fire? A. Yes, sir.

Q. About when was that?

A. Well, it was during September, some time.

(Testimony of Mrs. Ida Milligan.)

Q. Do you know Mr. Voorhees, the agent of the defendant company? A. Yes, sir.

Q. Did you see him on that occasion?

A. Yes, sir, I met him on the street.

Q. Did you talk with him?

A. Yes, sir, for a few minutes.

Mr. SAM A. WRIGHT.—That is all.

(Witness excused.)

Mr. SAM A. WRIGHT.—That is all, your Honor.

Mr. HULBERT.—We desire, if the Court please, to [117] present a question of law to the Court.

The COURT.—Proceed.

Mr. HULBERT.—Now that both sides have rested, the defendant challenges the sufficiency of the evidence, and asks the Court to direct a verdict in favor of the defendant under the statutes of this state, or withdraw the case from the jury and enter judgment for the defendant, for the reason that the evidence is wholly insufficient to support any verdict or judgment in favor of the plaintiff against the defendant, and particularly upon the ground that under the statute and the law of this state, an oral contract of fire insurance is not valid and cannot be enforced. In other words, that fire insurance must be in writing on the standard form. Upon the further ground that an agent created by the statute is only authorized to do those things the statute delegates or gives him the power to do, and right to do, and his right and power are clearly for the purpose of soliciting and effecting insurance in the manner provided by the statute, namely the

granting or issuing of policies countersigned by himself as agent, on the statutory form. I am going to call attention just briefly to our own statute.

(Argument.)

The COURT.—Did you raise this question on demurrer? [118]

Mr. HULBERT.—No, sir.

The COURT.—I will deny your motion and you may go to the jury now, and if there is any law that is misapplied in this trial after you have compelled the Court to go to a long trial and then raise a question that could have been raised on demurrer the Court has no patience with your contention and you may proceed with the argument.

Mr. HULBERT.—Note an exception.

(WHEREUPON respective counsel addressed the Court in argument and at the conclusion of said argument the Court instructed the jury as follows, to wit:) [119]

SECOND EXCEPTION.

The defendant prior to the argument of counsel and to the retirement of the jury excepted, and its exception was allowed, to the instructions of the Court that an oral contract of fire insurance under the statutes and laws of the State of Washington was valid and enforceable, as shown by the following portions of the Court's instructions.

“A contract of insurance is no different from any other kind of a contract.”

“You are further instructed that an oral contract of fire insurance under the laws of this state, if it is definite as to the parties insured, and the insurance company insuring the property of the insured, the property to be insured, the duration of the risk, the time of it, the amount of the premium, and the amount for which the property was to be insured, if all those things are settled upon and determined between the parties, then such an oral contract of insurance is good and valid, pending the issuance of the written policy thereafter to be issued, as was evidently contemplated between the parties in this case.”

“You are further instructed that no particular words or language was necessary in order to create the contract of insurance in this or any other case. It is sufficient to create such contract if the parties used such language as reasonably tends to show their intent to effect a contract of insurance. The use of the word ‘insured’ or ‘covered’ would not necessarily have to be used, but such words as ‘you are insured,’ ‘you are covered,’ ‘you are protected’ if used by the agent and are believed by the insured, then the contract is in force for the time being, and if that is the situation here, proven to you by a fair preponderance of the evidence, on behalf of the plaintiff, you are instructed that such language would be sufficient to create the contract of insurance sued upon in this case, the other elements thereof,

of its certainty and definiteness being established by the evidence, if you should so find, by a preponderance thereof." [120]

* * * * *

"If Mr. Voorhees and the plaintiff Milligan finally agreed that he was to be insured from that time, on July 22, 1924, and without entering into the minute details of the policy that was later to be issued, the inference of the law would be that they intended the ordinary and usual contract of insurance the companies were ordinarily putting out, and in this state that would be the New York Standard form, and that would be sufficient to settle the details and the terms of the contract of insurance which the law would infer; if one agreed 'I will buy insurance from you to a certain amount and at a certain price for the premium' and the other says 'I will sell it to you at that price and in the amount, taking effect from to-day' the other terms would be implied to be those of the ordinary New York Standard form, which was the form of the \$1200 policy."

"So the case comes down to this. If you believe the testimony on behalf of the plaintiff Milligan, that that contract of insurance was agreed upon and made as Mr. Milligan testifies to on the night of July 22, 1924, if you believe he has established that fact by the greater weight of the evidence, in the face of the evidence put in by the defendant,

why then the plaintiff is entitled to recover, and I should say the entire amount of that policy, or the agreed \$10,000.”

“It is the law that a contract such as plaintiff relies upon, a contract of insurance, can be made in this state.”

COURT'S INSTRUCTIONS AND EXCEPTIONS THEN AND THERE TAKEN AND ALLOWED THERETO.

The complete instructions given by the Court to the jury and the exceptions then and there taken and allowed thereto were as follows: [121]

Gentlemen of the Jury: You have heard the evidence and the argument of counsel, and now it is for the Court to deliver to you the instructions, or the charge, as it is termed.

In the main the purpose of that is to make you acquainted with the law that applies to the case, and which you will accept from the Court.

Sometimes the Court may comment on the evidence as presented before you, and he might even express an opinion as to the credibility of the witnesses, or what is or what is not proven, but it never can bind the judgment of the jury. To determine what the facts are is exclusively the function of the jury, and if the Court at any time does comment on the evidence or express an opinion as to the credibility of the witnesses, it is not done in an endeavor to bind your judgment as to the facts in the case, because the Court has neither the power nor the disposition to do so,

but it is done to guide you in the discharge of your duty, and to better enable you to arrive at the correct conclusion in the case. While you will take the law from the Court, we take the determination of the facts and the judgment as to the credibility of witnesses, what facts are proven and what are not proven, from you. That is your function.

This is what is termed a civil action, brought by the plaintiff to recover from the defendant, upon the ground that he had insured his property with the defendant at a certain time in last July, and while the contract for insurance was in force the property was destroyed, and that he made due proof of loss and demanded his money, and it [122] was not paid to him.

The defense is that there was no contract of insurance entered into between the defendant and the plaintiff, and the other defenses are set out in the answer that they have practically abandoned, about which there is no testimony at least, that the plaintiff had burned his own property. You will not be prejudiced against the defendant by reason of its setting up a defense that is not proven, because very often the defendant may set up a defense which it finds later it can not substantiate by proof and the defense is simply ignored.

In an action like this, a civil action, the burden is upon the plaintiff to prove the facts he alleges by the greater weight or the preponderance of the evidence. The rule differs from a criminal

case, as the burden is upon the Government in a criminal case, to prove the allegations of the charge beyond a reasonable doubt, before a jury can find the defendant guilty; but in a civil suit the plaintiff need only prove his case by the greater weight or the preponderance of the evidence to justify a verdict in his favor. You might conceive the evidence in behalf of the two parties as in two scales before you, and unless that which is in the plaintiff's scale is the heaviest, bears down, and carries the defendant's side up, he has not made out his case, by the greater weight or the preponderance of the evidence, and must therefore fail. If at the conclusion of the case the evidence is in equal balance, you cannot determine that the plaintiff has the greater weight with him, you might come to the conclusion you were not able [123] to believe him and his witnesses in the face of the defendant's proof, and that the weight of the evidence is not with him, or that the scales are in even balance, then the plaintiff has failed to prove his case, and your verdict must of necessity be for the defendant. You will see at once that it is not enough for a man to have a good cause of action in court, as he must not only allege it, but he must have evidence to prove it by the greater weight of the testimony when he comes before a jury in order to be entitled to a verdict at the hands of the jury.

A few general remarks as to the rules of law as to the credibility of witnesses. In considering the credibility of the witnesses it is your duty to ob-

serve the demeanor of the witness on the witness-stand, his manner of testifying, whether he is endeavoring to give you the truth in the matter, whether he is trying to aid the jury in arriving at the real issues in the case, or whether the contrary. You will take note of his opportunity for knowing the facts about which he testifies, and ask yourself has he any interest in the outcome of the suit, and if there is a contradiction between the witnesses, as there is in this case, it is for you to determine where the evidence conflicts and where the witnesses contradict each other, which witness you are to believe. You will take note of any contradiction of the circumstances shown in the case. Very often circumstances will point to you more unerringly the truth than the express statement of any witness. A man may swear to a certain thing on the witness stand which the [124] circumstances in the case may show to be inconsistent with the truth, and you may believe the circumstances as against the spoken testimony. It is an old saying that witnesses may testify falsely, but the circumstances will point to the truth. In so far as a witness has an interest in the case, you will consider that, and of course that applies to the plaintiff particularly. He has a large interest in this case. You will remember his interest, and take that into consideration in weighing his testimony. It is not a rule of law that a man interested in the case will testify falsely—not at all. The rule of law is that the jury will remember his interest, and

know that is the mightiest influence that may affect the conduct of men. Ask yourselves in weighing the testimony of the plaintiff whether it has affected his truthfulness and his right to be credited by you.

As to the interest of other witnesses in the case, it might be that Mr. Voorhees is interested, because if he made a contract—assumed to make a contract for the defendant he had no authority to make, while the defendant might be held liable here, Mr. Voorhees might be held liable in some action by the defendant. So you will have that in mind in weighing their credibility.

The case is after all a simple one, and yet it presents to a jury its difficulties, namely, whom to believe and how far.

It is the law that a contract such as plaintiff relies upon, a contract of insurance, can be made in this state. That is to say, if the defendant represented by its agent, if the agent assumed to enter into a contract, a definite arrangement to insure this property for [125] the plaintiff, Mr. Milligan, for the sum of \$10,000, for and on behalf of the defendant, who is now before the Court, upon a policy thereafter to be issued, why then the defendant would be liable. And if those things are proven to your satisfaction by the greater weight of the evidence, then the plaintiff would be entitled to a verdict in this case.

A contract of insurance is no different from any other kind of a contract. It must contain all the essential features of a complete contract, and all

the elements of the contract must be agreed upon prior to the loss in a fire insurance contract before there can be any binding contract of insurance. The amount of the insurance to be carried must be agreed upon, and the parties to the contract, not only the person to be insured, like Mr. Milligan in this case, but the company that is to do the insuring, must be agreed upon. The property to be covered must be agreed upon; the rate to be charged, the time the policy is to run, the name of the insurance company that is to carry the insurance, and if as is claimed in this case the contract was entered into by this defendant insurance corporation, then it must be shown that someone authorized to bind the company did agree upon all the essential elements of the contract.

If you find that Mr. Voorhees was the agent of the defendant company—and that is admitted now—and if you find he was authorized to make the contract in question, and he was, as the Court will explain later, and you should further find that Mr. Voorhees represented other [126] insurance companies, and he did, he represented others than the defendant, then before you can find for the plaintiff here against this defendant company, you must be convinced by a fair preponderance of the evidence, that Mr. Voorhees and the plaintiff agreed that this defendant company was to carry the risk and contracted for the entire amount of the insurance in question, and that this defendant company was agreed upon, and that the contract of insurance was complete

before the loss was sustained. If you find all the essential elements of the contract were agreed upon between Mr. Voorhees and the plaintiff, yet the plaintiff cannot recover from the defendant in this case unless it was agreed at the time that this defendant company was the company for which Mr. Voorhees was making the contract, if any such contract was made. In other words, if the plaintiff's version of the case is correct, and that he and Mr. Voorhees entered into this agreement of insurance to insure his property, yet if the company, this particular company, was not settled upon, if it was left indefinite and undecided which one of the companies represented by Mr. Voorhees should write the policy, there would be no contract that could bind this company, whatever remedy the plaintiff would have against Mr. Voorhees himself, and the Court does not say he would have any.

You are further instructed that an oral contract of fire insurance under the laws of this state, if it is definite as to the parties insured, and the insurance company insuring the property of the insured, the property to be insured, the duration of the risk, the [127] time of it, the amount of the premium, and the amount for which the property was to be insured, if all those things are settled upon and determined between the parties, then such an oral contract of insurance is good and valid, pending the issuance of the written policy thereafter to be issued, as was evidently contemplated between the parties in this case. You

are instructed that it is the law that the agent of an insurance company who has authority from his company to solicit and procure insurance for the company and to write policies of insurance and countersign the policies and collect the premium thereon, has in law apparent and implied authority to enter into oral contracts of insurance, pending the issuance of the policy. That is to say, he can agree with the insured before the policy actually issues that the policy will be in force to protect him until the policy is issued.

Any of you may order a policy of insurance to-day and it may take several days or a week even in the insurance office to get out that policy, and if then accepted you are insured in the meantime, and the ordinary agent of an insurance company, held out by the company as its agent, to solicit insurance has authority to enter into that sort of an arrangement, unless the company has forbidden him to do so, and has brought that home to the person seeking insurance.

It is not enough for the company to tell this agent "You cannot enter into these oral arrangements; you can accept only applications and we will say if we want to write the policy." That is not enough to shield the company from the liability the agent can impose upon [128] it if the company does not bring it home to the insured. You can see the reason for that. These agents are in every little hamlet in the country, and they solicit insurance and purport to act for the company, and the law is that they can be assumed to have full

authority to bind the company in the sort of engagement involved in this case, unless the fact that they have not has been brought by the company home to the party who applies to them for insurance.

You are further instructed that no particular words or language was necessary in order to create the contract of insurance in this or any other case. It is sufficient to create such contract if the parties used such language as reasonably tends to show their intent to effect a contract of insurance. The use of the word "insured" or "covered" would not necessarily have to be used, but such words as "You are insured," "You are covered," "You are protected" if used by the agent and are believed by the insured, then the contract is in force for the time being, and if that is the situation here, proven to you by a fair preponderance of the evidence, on behalf of the plaintiff, you are instructed that such language would be sufficient to create the contract of insurance sued upon in this case, the other elements thereof, of its certainty and definiteness being established by the evidence, if you should so find, by a preponderance thereof.

Now, Gentlemen of the Jury, to come briefly to the facts of this case, as I said to you, it will present some difficulties in determining what is the exact [129] truth in respect to this contract of insurance upon which the plaintiff counts and which the defendant denies.

It seems the plaintiff, Milligan, owned a hotel in the town called Morton, and had some insurance

on it, some he had taken out through the agency of Mr. Voorhees, a policy in the amount of \$1,200, in this very same company. That was on the furnishings of the hotel, I think. And there was a \$2,000 policy in some company—it is disputed between the parties—the plaintiff says by this defendant company, and the defendant says it was another company—upon the building, but that \$2,000 policy was not taken up, by Mr. Milligan, but was allowed to be cancelled some time in the middle of July of 1924. Those policies are not very important except from this standpoint, that it shows there was some relationship already between Mr. Voorhees and the plaintiff Mr. Milligan, and also to show the terms upon which they finally agreed, because if Mr. Voorhees and the plaintiff Milligan finally agreed that he was to be insured from that time, on July 22, 1924, and without entering into the minute details of the policy that was later to be issued, the inference of the law would be that they intended the ordinary and usual contract of insurance the companies were ordinarily putting out. In this state that would be the New York Standard form, and that would be sufficient to settle the details and the terms of the contract of insurance which the law would infer; if one agreed “I will buy insurance from you to a certain amount and at a certain price for the premium” and the other says “I will sell it to you at that price and in the amount, taking effect [130] from to-day” the other terms would be implied to be those of the ordinary New York Standard form, which was the form of the \$1,200 policy.

Both parties agreed, the plaintiff Milligan and Voorhees, that they had some talk about further insurance on this hotel property on behalf of Milligan. Milligan says that after the conversation on July 22, Mr. Voorhees came up to look over the property. They both agree that Voorhees did look over the property, and Mr. Milligan says that then and there it was agreed between him and Voorhees the hotel was to be insured for \$10,000—I think \$10,000 more, for one year, at a premium of \$500, and the premium to be taken up and paid within 60 days, I think, but that is not very material, but any how to be paid in 60 days if not paid sooner. Mr. Milligan further says it was to be in the same company as the little policy, and Mr. Milligan testifies he saw Mr. Voorhees write out a memorandum and saw in this memorandum the name of the National Liberty Insurance Company. He got no writing whatever at that time and place. He says, however, he did ask whether the policy was in effect and would be in effect then, that he wanted it to be in effect then, and that Mr. Voorhees told him it was, and that it would take effect from that time.

In corroboration of his testimony he produces the witness Bagley, who says he sat there and heard some part of the conversation, heard Mr. Milligan and Mr. Voorhees talking about insurance, and that he heard the plaintiff say “When will it take effect?” and Mr. Voorhees said, “It takes effect now” on the evening of July 22. And Mr. [131] Bagley also says he heard Mr. Milligan ask Mr. Voorhees in what company it would be written,

and Mr. Voorhees said, "The same as your little policy," and that he heard him say something about "National," but could not say the rest of the company's name.

In further corroboration, the plaintiff Milligan calls the witness Fletcher, who says he heard Mr. Voorhees and Mr. Milligan talking in the lobby of the hotel on the night of the fire, but before it had occurred, at 7 o'clock P. M., and that he heard the plaintiff ask Mr. Voorhees if he thought his insurance was all right, and that Mr. Voorhees said, "Yes, it is all right."

Now, in further corroboration the plaintiff calls the young lady, June Mackie, the telephone girl, who testifies it was sometime—I do not think the date was fixed, other than sometime apparently before the fire—that Mr. Voorhees—I think the witness says it was on July 22 or July 23—on the 23d, Mr. Voorhees put in a long distance call to the firm of Lamping & Company, who were the general agents of the defendant company, and she says she gave him the phone—it was agreed it was Lamping & Company's phone, and that there was a conversation had in which he said he had insured Mr. Milligan for \$10,000 last night, \$6,000 on the building and \$4,000 on the furnishings, something in substance that, and there was a letter in the postoffice going forward from Mr. Voorhees to Lamping & Company, and that he, Voorhees, did not have the form of policy that was wanted, and for the party at the other end of the line to send on a form of the policy. [132]

Now, the defendant says that much of that is not true; They produced Mr. Voorhees, who testifies the plaintiff had, before July 22, his \$2,000 policy been cancelled, because he did not want and would not pay the premium. There was a little difference as to why it was not taken, but that is not of much account here—he says the plaintiff did come and ask him about the matter of more insurance on the building on Tuesday, I think that would be July 22, if I remember it rightly; and that he told the plaintiff Milligan at that time that he would consider the proposition and taken it up with his company, giving him to understand he, Voorhees, could not insure him without having a decision from the company, so Mr. Voorhees says.

He says then he did go out and examine the property on the evening of July 22, and looked it over, and made some suggestions to the plaintiff that he would have to clean up the rubbish around the place, and that he did not make any promise or intimate at that time that he would write or secure the insurance upon that property; that he did not contract with him at that time, or agree with him, Milligan, as Milligan says, at that time to write the insurance, to attach then and there, or at all, but in effect on the contrary, and that he had told him during the day that he would have to take it up with his company. And then he produces letters showing on the following day Mr. Voorhees wrote to Lamping & Company, and Lamping & Company wrote back, and refused to take the risk, and these letters are introduced in evidence before you.

Remember the offer of those letters is not to [133] prove their contents; they are not proof of their contents. The purpose of them is this: Mr. Voorhees and the defendant insist that Mr. Voorhees had no authority to make such a contract as Mr. Milligan says was made on July 22, and Mr. Voorhees in order to corroborate the fact as he states it, that he did not make the contract, as showing he was carrying out his employer's instructions, the defendant's instructions, by writing to Lamping & Company to get Lamping & Company's consent to do that, to write the insurance in that amount, to insure Mr. Milligan for \$10,000, presents these letters in evidence; but mind you, that would not be conclusive, and if Mr. Voorhees did, if he was so anxious to secure that amount of insurance, and get his commission out of it, if he overstepped his instructions from the defendant, and entered into that contract with Mr. Milligan, as Mr. Milligan says he did, even though he may have violated his instructions from his company, the company would be bound by the action of Mr. Voorhees in making that contract, because, as I said before, if they hold out an agent as having a general authority to solicit and grant insurance without advising the applicant he can not enter into any such engagement, those who negotiate with the agent and secure that sort of a contract, without knowing the company has forbidden the agent to make that sort of a contract, can still call upon the company to perform.

Now, the general law of agency is that if any

person send out an agent to solicit business for him, that agent has certain implied powers reasonably necessary to carry on that person's business, which anyone on the outside dealing with him can infer he has, and rely upon them [134] despite any *secrete* instruction that person may have given the agent, by which he has undertaken to take away from the agent the power he ordinarily would have.

In corroboration of Mr. Voorhees statements the defendant points to what it thinks is inconsistent conduct on the part of Mr. Milligan. The fire occurred, but before it occurred there was some testimony by one person, that I think on Wednesday evening he heard Mr. Voorhees assure Mr. Milligan at that time the insurance was all right, he was being protected from that time, but after the fire occurred the company points to what it characterizes as inconsistent conduct, and if it is proven, it is inconsistent conduct, on the part of Mr. Milligan, inconsistent with his testimony here.

It produces before you the witness Brennan, an insurance man, employed in the office of Seeley & Company, who has no connection, so it is testified, with the defendant company. And he testifies after the fire, when this property was destroyed, Mr. Milligan came to their office and told him, that he, Milligan, had \$10,000 policy on that property in the Washington State Underwriters, and Mr. Brennan looked up the record and said there was no such insurance policy, and Mr. Milligan insisted he had such a policy, and had secured it through Mr. Voorhees in the Washington State Underwriters Com-

pany; and the defendant contends that if that testimony is to be believed, it would show that this defendant company was not agreed upon as the company which was to write the insurance in question, because, they argue, if it had been agreed upon that the defendant [135] National Liberty Insurance Company was to be the insurer, why on the day after, or a day or two after the fire, would Mr. Milligan go to Seeley & Company's office, and have this conversation with Mr. Brennan, contending the policy was written or to be written in the Washington State Underwriters. And in addition to that the defendant company calls in the witness Crawford, another insurance man, in the same office with Mr. Brennan, who knew Mr. Milligan, and heard the conversation between Mr. Milligan and Mr. Brennan, and he says the conversation was as Mr. Brennan testifies to, namely that Mr. Milligan said the insurance was with the *Washington* Washington Underwriters Company, and both of them say he made no mention at that time whatever of any policy in this defendant, National Liberty Insurance Company.

That is to be given consideration by the jury in weighing the testimony, and is to be given such weight as you think it is entitled to. First, did it happen? Mr. Milligan says no, if I remember the testimony rightly. Mr. Milligan denies he had that conversation that Mr. Brennan and Mr. Crawford say he had. If he did have it, why did he have it? Had he agreed with Mr. Voorhees that the National Liberty Insurance Company, the defendant company, was to insure him, if that agreement was

made with Mr. Voorhees. Ask yourselves if it is likely that he would go to Seeley & Company's office and make that claim that Mr. Crawford and Mr. Brennan say he did, if that were the fact. Is Mr. Milligan telling the truth or are Mr. Brennan and Mr. Crawford telling the truth? Mr. Brennan and Mr. Crawford say such a conversation was [136] had, and Mr. Milligan says it did not occur; who has the greater interest, or is there a feeling of affinity between insurance men generally that would make Mr. Crawford and Mr. Brennan testify falsely in helping out the defendant company? A man may be moved more by his self-interest in the hopes of getting \$10,000, than if mere friendship were the consideration. I do not say either is true, but it is for you to weigh thru circumstances their testimony in determining where the truth lies. If you do give credit to Mr. Crawford's and Mr. Brennan's statements as to what occurred at that time and place, that should go a long way towards discrediting Mr. Milligan's testimony, as between him and Mr. Voorhees as to whether this company, defendant company, did through Mr. Voorhees agree to insure this property for \$10,000.

The company also brings the witness Morris to testify that after the fire he heard the plaintiff ask Mr. Voorhees if he thought his insurance was all right, and that Mr. Voorhees said "I think so; but I will have to verify it by wire before I would know." What the significance of that is, both aspects of it, is for you to decide.

It might be that if the contract was made as Mr.

Milligan says it was, he wanted to have assurance made doubly sure by asking again, but if he had agreed upon a definite contract before the fire, why did he, ask yourselves, or you can ask yourself, would Mr. Voorhees say, "I think it is all right, but I will have to verify it by wire?" Would that corroborate Mr. Voorhees, when he says before he looked at the property to figure on [137] the insurance, he had told Mr. Milligan he could only submit it to his company?

Those are all circumstances for the jury's honest consideration and judgment, in your effort to render a fair and impartial verdict in accordance with the law and the evidence in the case. The Court states no opinion of its own as to the facts. Mr. Milligan denied that conversation that Mr. Morris testified to.

There is testimony by Mr. Lamping also for the purpose I have before indicated, that Mr. Voorhees telephoned to him about the \$10,000 insurance that was talked over between Mr. Voorhees and Mr. Milligan, that it was to be submitted to Mr. Lamping for determination, and the letter came along later, and Mr. Lamping declined to take the risk, but, as I said before, those letters and that conversation, are not proof of their contents at all, if you believe them, because all of evidence is here for you to say whether or not you believe it. You do not have to believe something is true because some witness says it is so. That applies to both sides. The evidence must commend itself to you as credible before you are to believe it.

It is a rule of law that where a witness is not corroborated where you would expect him to be corroborated, or where he is not *contracted* where you would expect him to be contradicted, that is a matter you may take into consideration in weighing his testimony. You will not reject the testimony of any witness arbitrarily, but you may see reasons, in his attitude, or demeanor, or his interest, or other matters, that would affect his credibility in your judgment why you would not believe him. [138] How you determine the credibility of a man in daily life, you determine it right here in regard to the man on the witness-chair.

The plaintiff appeals to the proposition that after the fire the check for the premium was paid over by the plaintiff to Mr. Voorhees, and he kept it some 60 days, if I remember rightly, and then returned it. And there is some evidence also that he had said—and that is only impeaching evidence—that he was going to deposit the check and take out his commission and send on the balance, which Mr. Voorhees denies. He says he held the check because he did not know the address of the plaintiff in the case. If Mr. Voorhees was holding it in a dilemma as to his own situation in the case, if he was fearful he might be held liable by the plaintiff or by his company if he exceeded his instructions that he had got from his company, is not a circumstance or of any materiality to be weighed against the defendant company in this case. There is no evidence they had any knowledge that Mr. Voorhees had received the check after the fire or

was holding it for 60 days.

So the case comes down to this. If you believe the testimony on behalf of the plaintiff Milligan, that contract of insurance was agreed upon and made as Mr. Milligan testifies to on the night of July 22, 1924, if you believe he has established that fact by the greater weight of the evidence, in the face of the evidence put in by the defendant, why then the plaintiff is entitled to recover, and I should say the entire amount of that policy, or the agreed \$10,000. He testifies the property was worth [139] that amount of money and that the property would justify that amount of insurance, and there is no evidence to the contrary. Apparently the defendant is relying upon the contention that no such contract was made, and if the defendant's evidence, taken in connection with the plaintiff's leaves the case in equal balance, or without the greater weight on the plaintiff's side, the defendant is entitled to a verdict, and the plaintiff is entitled to nothing, and that is the case or the question the jury must decide. Do you believe the plaintiff's side sufficiently to say the greater weight of the evidence is with him? If you do, you will find for him; otherwise you will not.

It takes 12 of your number to agree in this case, and when you retire to your jury-room you will select a foreman from your number who will sign the verdict you agree upon. Any exceptions?

Mr. CLARK.—It is admitted that the premium of \$500 is not paid.

The COURT.—The testimony is that the check was returned. Any exceptions from the plaintiff.

Mr. SAM A. WRIGHT.—No.

The COURT.—From the defendant?

Mr. HULBERT.—We except to the instruction of the Court wherein the Court instructed the jury that an oral contract, under the statutes and laws of the State of Washington, was valid and enforceable.

We also desire to except to that part of the instructions of the Court in [140] which the Court instructed the jury that Mr. Voorhees was authorized to make the insurance that is mentioned in the plaintiff's complaint and sued upon in this case.

We except to the instruction of the Court given to the jury to the effect that Mr. Voorhees under the statutes and laws of this state would be authorized and have the authority to bind the defendant company under the law and under the facts shown in this case, upon an oral contract or agreement of insurance, until the policy of insurance be issued or at all. The suit is upon an alleged contract of oral insurance and not to insure.

And we also except to the instruction given by the Court with reference to the purpose of the letters, if your Honor please, that the Court instructed the jury upon. The Court told the jury the only purpose of the letters went to the authority, the alleged authority of Mr. Voorhees to

enter into this contract. We contend in addition to that the purpose of the letters was to show and to corroborate Mr. Voorhees' statement that he did not enter into it.

The COURT.—That is what I told the jury.
[141]

Mr. HULBERT.—I beg your Honor's pardon. I think the Court instructed the jury that the purpose of the letters went to the question of the authority.

The COURT.—No. The letters, Gentlemen of the Jury, are no evidence, no proof of their contents, but they are simply in the case for this purpose: Mr. Voorhees says he did not make the contract, and to corroborate that statement that next morning he wrote the company asking leave to make the contract, and he argues why did he write that letter if he had contracted as Mr. Milligan says he did. That is all they are there for. If you find they corroborate him, that he did not make the contract, that is all they are in for.

Mr. HULBERT.—I also except the *the* instructions that if the jury finds for the plaintiff it will find for the plaintiff in the sum of \$10,000 in any event, because the insurance premium never was paid. That is admitted.

The COURT.—Oh, yes, I will call attention to that.

Mr. ELIAS A. WRIGHT.—When we presented the check we presented it not only as an exhibit, but as a tender. It is perfectly good to-day, and it is here. [142]

The COURT.—Do you plead an offset?

Mr. SAM A. WRIGHT.—They have not.

The COURT.—Very well; the exception may be noted. The Court will give you the pleadings, although you do not need them; you know the issues involved here—and two forms of verdict, one for each party, and you will have with you the exhibits introduced in evidence; although I will not say you have to read them; but you can look at them if you want to.

(Whereupon the jury retired to consider their verdict.) [143]

The defendant, in support of this second exception submits the stenographic report of the trial heretofore set out in support of the first exception, with all the exhibits, being all of the evidence offered and received at the trial herein, together with the Court's complete instructions hereinabove set forth and the exceptions then and there taken and allowed thereto, and submits the same as a bill of exceptions in support of this its second exception. [144]

THIRD EXCEPTION.

The defendant prior to the argument of counsel and to the retirement of the jury excepted and its exception was allowed to the instructions of the Court that Mr. Voorhees was authorized to make the insurance that is mentioned in the plaintiff's complaint and sued upon in this case as shown by the following portions of the Court's instructions:

“If you find that Mr. Voorhees was the

agent of the defendant company—and that is admitted now—and if you find he was authorized to make the contract in question, and he was, as the Court will explain later, and you should further find that Mr. Voorhees represented other insurance companies, and he did, he represented others than the defendant, then before you can find for the plaintiff here against this defendant company, you must be convinced by a fair preponderance of the evidence, that Mr. Voorhees and the plaintiff agreed that this defendant company was to carry the risk and contracted for the entire amount of the insurance in question, and that this defendant company was agreed upon, and that the contract of insurance was complete before the loss was sustained. If you find all the essential elements of the contract were agreed upon between Mr. Voorhees and the plaintiff, yet the plaintiff cannot recover from the defendant in this case unless it was agreed at the time that this defendant company was the company for which Mr. Voorhees was making the contract, if any such contract was made. In other words, if the plaintiff's version of the case is correct, and that he and Mr. Voorhees entered into this agreement of insurance to insure his property, yet if the company, this particular company, was not settled upon, if it was left indefinite and undecided which one of the companies represented by Mr. Voorhees should write the policy, there would be no con-

tract that could bind this company, whatever remedy the plaintiff would have against Mr. Voorhees himself, and the Court does not say he would have any."

"Mr. Voorhees and the defendant insist that Mr. Voorhees had no authority to make such a contract as Mr. Milligan says was made on [145] July 22, and Mr. Voorhees in order to corroborate the fact as he states it, that he did not make the contract, as showing he was carrying out his employer's instructions, the defendant's instructions, by writing to Lamping & Company to get Lamping & Company's consent to do that, to write the insurance in that amount, to insure Mr. Milligan for \$10,000, presents these letters in evidence; but mind you, that would not be conclusive, and if Mr. Voorhees did, if he was so anxious to secure that amount of insurance, and get his commission out of it, if he overstepped his instructions from the defendant, and entered into that contract with Mr. Milligan, as Mr. Milligan says he did, even though he may have violated his instructions from his company, the company would be bound by the action of Mr. Voorhees in making that contract, because, as I said before, if they hold out an agent as having a general authority to solicit and grant insurance without advising the applicant he cannot enter into any such engagement, those who negotiate with the agent and secure that sort of a contract, without knowing the company has forbidden

the agent to make that sort of a contract, can still call upon the company.”

“If you believe the testimony on behalf of the plaintiff Milligan, that that contract of insurance was agreed upon and made as Mr. Milligan testifies to on the night of July 22, 1924, if you believe he has established that fact by the greater weight of the evidence, in the face of the evidence put in by the defendant, why then the plaintiff is entitled to recover, and I should say the entire amount of that policy, or the agreed \$10,000.”

The defendant in support of this third exception submits the stenographic report of the trial heretofore set out in support of the first exception with all exhibits being all of the evidence offered and received at the trial herein, together with the Court's complete instructions and the exceptions then and there taken and allowed thereto, as set forth in support of the second exception and submits the same as a bill of exceptions in support of this, its third exception. [146]

FOURTH EXCEPTION.

The defendant, prior to the argument of counsel and to the retirement of the jury, excepted, and its exception was allowed, to the instructions of the Court to the effect that Mr. Voorhees under the statutes and laws of this state would be authorized and have the authority to bind the defendant company under the law and under the facts shown in this case upon an oral contract or agreement of

insurance until the policy of insurance could be issued or at all, as shown by the following portions of the Court's instructions:

“It is the law that a contract such as plaintiff relies upon, a contract of insurance, can be made in this state. That is to say, if the defendant represented by its agent, if the agent assumed to enter into a contract, a definite arrangement to insure this property for the plaintiff, Mr. Milligan, for the sum of \$10,000, for and on behalf of the defendant, who is now before the Court, upon a policy thereafter to be issued, why there the defendant would be liable. And if those things are proven to your satisfaction by the greater weight of the evidence, then the plaintiff would be entitled to a verdict in this case.”

“You are instructed that it is the law that the agent of an insurance company who has authority from his company to solicit and procure insurance for the company and to write policies of insurance and countersign the policies and collect the premium thereon, has in law apparent and implied authority to enter into oral contracts of insurance, pending the issuance of the policy. That is to say, he can agree with the insured before the policy actually issues that the policy will be in force to protect him until the policy is issued.

Any of you may order a policy of insurance to-day and it may take several days or a week even in the insurance office to get out that

policy, and you are insured in the meantime, and the ordinary agent of an insurance company, held out by the company as its agent, to solicit insurance has authority to enter into that sort of an arrangement, unless the company has forbidden him to do so, and has *brought* that home to the person seeking insurance. [147] It is not enough for the company to tell this agent 'you cannot enter into these oral arrangements; you can accept only applications and we will say if we want to write the policy.' That is not enough to shield the company from the liability the agent can impose upon it if the company does not bring it home to the insured. You can see the reason for that. These agents are in every little hamlet in the country, and they solicit insurance and purport to act for the company, and the law is that they can be assumed to have full authority to bind the company in the sort of engagement involved in this case, unless the fact that they have not has been brought by the company home to the party who applied to them for insurance."

"Mr. Voorhees and the defendant insist that Mr. Voorhees has no authority to make such a contract as Mr. Milligan says was made on July 22, and Mr. Voorhees in order to corroborate the fact as he states it, that he did not make the contract, as showing he was carrying out his employer's instructions, the defendant's instructions, by writing to Lamping & Company

to get Lamping & Company's consent to do that, to write the insurance in that amount, to insure Mr. Milligan for \$10,000, presents these letters in evidence; but mind you, that would not be conclusive, and if Mr. Voorhees did it he was so anxious to secure that amount of insurance, and get his commission out of it, if he overstepped his instructions from the defendant, and entered into that contract with Mr. Milligan, as Mr. Milligan says he did, even though he may have violated his instructions from his company, the company would be bound by the action of Mr. Voorhees in making that contract, because, as I said before, if they hold out an agent as having a general authority to solicit and grant insurance without advising the applicant he can not enter into any such engagement, those who negotiate with the agent and secure that sort of a contract, without knowing the company has forbidden the agent to make that sort of a contract, can still call upon the company."

"If you believe the testimony on behalf of the plaintiff Milligan, that that contract of insurance was agreed upon and made as Mr. Milligan testifies to on the night of July 22, 1924, if you believe he has established that fact by the greater weight of the evidence, in the fact of the evidence put in by the defendant, why then the plaintiff is entitled to recover, and I should say the entire amount of that policy, or [148] the agreed \$10,000."

The defendant, in support of this its Fourth Exception, submits the stenographic report of the trial heretofore set out in support of the First Exception with all the exhibits, being all of the evidence offered and received at the trial herein, together with the Court's complete instructions and the exceptions then and there taken and allowed thereto set out in support of the Second Exception, and submits the same as a bill of exceptions in support of this its Fourth Exception. [149]

FIFTH EXCEPTION.

That defendant prior to the argument of counsel and to the retirement of the jury excepted and its exception was allowed, to the instruction of the Court that if the jury finds for the plaintiff, it will find for the plaintiff in the sum of \$10,000, for the reason that the insurance premium was never paid, said instruction being as follows:

“If you believe the testimony on behalf of the plaintiff Milligan, that that contract of insurance was agreed upon and made as Mr. Milligan testifies to on the night of July 22, 1924, if you believe he has established that fact by the greater weight of the evidence, in the face of the evidence put in by the defendant, why then the plaintiff is entitled to recover, and I should say the entire amount of that policy, or the agreed \$10,000.”

Defendant, in support of this its Fifth Exception submits the stenographic report of the trial heretofore set out in support of the First Exception

with all exhibits, being all of the evidence offered and received at the trial herein, together with the Court's complete instructions and the exceptions then and there taken and allowed thereto as set forth in support of the Second Exception and submits the same as a bill of Exceptions in support of this its Fifth Exception. [150]

WHEREUPON counsel for the defendant presents the foregoing as its bill of exceptions in the above case and prays that the same may be settled, allowed, signed and certified by the Judge of said court.

BATTLE, HULBERT, GATES & HEL-
SELL.

ROBERT A. HULBERT,
FRED G. CLARKE,
Attorneys for Defendant. [151]

[Title of Court and Cause.]

STIPULATION RE BILL OF EXCEPTIONS.

It is hereby stipulated by the parties hereto through their attorneys, that the Clerk of the above-entitled court may transmit the foregoing bill of exceptions proposed by the defendant and consisting of pages 1 to 131, inclusive, to the Hon. George M. Bourquin.

And it is further stipulated that said proposed bill of exceptions may be approved, allowed and settled as a true bill of exceptions.

Dated at Seattle, Washington, this 8th day of July, 1925.

WRIGHT & WRIGHT,
Attorneys for Plaintiff.
BATTLE, HULBERT, GATES &
HELSELL,
ROBT. A. HULBERT,
FRED G. CLARKE,
Attorneys for Defendant. [152]

[Title of Court and Cause.]

ORDER SETTLING AND ALLOWING BILL
OF EXCEPTIONS.

The foregoing bill of exceptions proposed by the defendant, consisting of pages 1 to 131, inclusive, having been duly served upon the attorneys for the plaintiff and having been lodged with the Clerk of the above-entitled court within due time and the attorneys for the plaintiff having stipulated in writing to the settling and allowing of said bill of exceptions and said bill of exceptions conforming to the truth and being in proper form, and some corrections in the instructions having been by me made,—

NOW THEREFORE, I, the undersigned Judge of the above-named court and the Judge who tried the above-entitled action, hereby certify that the foregoing proposed bill of exceptions contains all of the evidence and testimony introduced upon the trial of said cause, together with all objections and exceptions made and taken to the admission or ex-

clusion of testimony and all motions; offers to prove and admissions and rulings thereon and all exceptions taken thereto; and all the original exhibits admitted in evidence on the trial of said cause are hereby made a part of said bill of exceptions to be appended thereto and embodied therein; and I further certify that said proposed bill of exceptions contains all the Court's [153] instructions to the jury and the exceptions taken thereto; and said proposed bill of exceptions is hereby certified to be a true bill of exceptions and the same is approved, allowed and settled and ordered filed and made a part of the record in said cause.

Done in open court, in term, this 11 day of July, 1925.

BOURQUIN,
Judge.

We consent to the entry of the foregoing order.

WRIGHT & WRIGHT,
Attorneys for Plaintiff.

Copy of defendant's proposed bill of exceptions received and service thereof acknowledged this 26th day of June, A. D. 1925.

WRIGHT & WRIGHT,
E. A.

Attorneys for Plaintiff, W. A. Milligan.

[Endorsed]: Lodged Jun. 26, 1925.

[Endorsed]: Filed Jul. 13, 1925. [154]

[Title of Court and Cause.]

PETITION FOR WRIT OF ERROR.

And now comes National Liberty Insurance Company of America, a corporation, the defendant herein, and says that on the 15th day of June, 1925, this Court entered judgment herein in favor of the plaintiff and against this defendant in which judgment and the proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE this defendant prays that a writ of error may issue in its behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors complained of, and that a transcript of the record, proceedings, and papers in this cause duly authenticated may be sent to the said Circuit Court of Appeals for the Ninth Circuit, and that an order be made fixing the amount of security to be given by this defendant conditioned as the law directs, and upon giving such bond as may be required, that all further [155] proceedings may be suspended until the determination of said Writ of Error by

the said Circuit Court of Appeals for the Ninth Circuit.

BATTLE, HULBERT, GATES & HEL-
SELL,

ROBT. A. HULBERT,
FRED G. CLARKE,

Attorneys for National Liberty Insurance Com-
pany of America, a Corporation, Defendant
and Petitioner in Error.

Copy of foregoing petition for writ of error re-
ceived August 1st, 1925.

WRIGHT and WRIGHT,
Attorneys for W. A. Milligan, Plaintiff.

[Endorsed]: Filed Aug. 1, 1925. [156]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

The defendant in this action in connection with its petition for a writ of error makes the following assignments of error which it avers occurred upon the trial of the cause, to wit:

I.

The Court erred in overruling and denying defendant's challenge at the close of all the evidence to the sufficiency of the evidence to sustain a verdict for the plaintiff and in overruling defendant's motion to instruct the jury to return a verdict for the defendant for the reason that:

(1) The alleged contract of fire insurance herein

sued upon was not in writing and on the New York standard form as provided by the laws of the State of Washington.

(2) The alleged agent of the defendant insurance company only had the right and power under the laws of the State of Washington to solicit and effect fire insurance by countersigning written policies issued by the company on the New York standard form.

(3) The alleged agent of the defendant insurance [157] company only had the right and power under his authority from the defendant, as shown by the evidence, to solicit fire insurance and to submit applications for the same to the company for its acceptance or rejection, and if accepted and a policy issued to countersign the same as provided by the laws of the State of Washington.

(4) The evidence is sufficient to establish the existence of an oral contract of fire insurance.

II.

The Court erred in overruling defendant's motion to set aside the verdict of the jury and to grant to defendant a new trial for reasons assigned in support of defendant's assignment of error No. I.

III.

The Court erred in rendering judgment in favor of the plaintiff and against the defendant, and in refusing to render judgment in favor of the defendant and against the plaintiff for the reasons

hereinabove assigned in support of defendant's assignment of error No. I.

IV.

The Court erred in its charge to the jury wherein the Court instructed the jury that an oral contract of fire insurance under the statutes and laws of the State of Washington was valid and enforceable as shown by the following portions of the Court's instructions:

(1) "It is the law that a contract such as plaintiff relies upon, a contract of insurance, can be made in this state. That is to say, if the defendant represented by its agent, if the agent assumed to enter into a contract, a definite arrangement to insure this property for the plaintiff, Mr. Milligan, for the sum of \$10,000, for and on behalf of the defendant, who is now before the [158] Court, upon a policy thereafter to be issued, why then the defendant would be liable. And if those things are proven to your satisfaction by the greater weight of the evidence, then the plaintiff would be entitled to a verdict in this case."

(2) "A contract of insurance is no different from any other kind of a contract."

(3) "If you find that Mr. Voorhees was the agent of the defendant company—and that is admitted now—and if you find he was authorized to make the contract in question, and he was, as the Court will explain later, and you should further find that Mr. Voorhees represented other insurance companies, and he did, he represented others than the defendant, then before you can

find for the plaintiff here against this defendant company, you must be convinced by a fair preponderance of the evidence, that Mr. Voorhees and the plaintiff agreed that this defendant company was to carry the risk and contracted for the entire amount of the insurance in question, and that this defendant company was agreed upon, and that the contract of insurance was complete before the loss was sustained.”

(4) “You are further instructed that an oral contract of fire insurance under the laws of this state, if it is definite as to the parties insured, and the insurance company insuring the property of the insured, the property to be insured, the duration of the risk, the time of it, the amount of the premium, and the amount for which the property was to be insured, if all those things are settled upon and determined between the parties, then such an oral contract of insurance is good and valid, pending the issuance of the written policy thereafter to be issued, as was evidently contemplated between the parties in this case.” [159]

(5) “You are instructed that it is the law that the agent of an insurance company who has authority from his company to solicit and procure insurance for the company and to write policies of insurance and countersign the policies and collect the premium thereon, has in law apparent and implied authority to enter into oral contracts of insurance, pending the issuance of the policy. That is to say, he can agree with the insured before the policy actually issues that the policy will

be in force to protect him until the policy is issued.”

(6) “Any of you may order a policy of insurance to-day and it may take several days or a week even in the insurance office to get out that policy, and if they accepted you are insured in the meantime, and the ordinary agent of an insurance company, held out by the company as its agent, to solicit insurance has authority to enter into that sort of an arrangement, unless the company has forbidden him to do so, and has brought that home to the person seeking insurance.”

(7) “It is not enough for the company to tell this agent ‘You cannot enter into these oral arrangements; you can accept only applications and we will say if we want to write the policy.’ That is not enough to shield the company from the liability the agent can impose upon it if the company does not bring it home to the insured. You can see the reason for that. These agents are in every little hamlet in the country, and they solicit insurance and purport to act for the company, and the law is that they can be assumed to have full authority to bind the company in the sort of [160] engagement involved in this case, unless the fact that they have not has been brought by the company home to the party who applies to them for insurance.”

(8) “You are further instructed that no particular words or language was necessary in order to create the contract of insurance in this or any other case. It is sufficient to create such contract if the parties used such language as reason-

ably tends to show their intent to effect a contract of insurance. The use of the word 'insured' or 'covered' would not necessarily have to be used, but such words as 'You are insured,' 'You are covered,' 'You are protected' if used by the agent and are believed by the insured, then the contract is in force for the time being, and if that is the situation here, proven to you by a fair preponderance of the evidence, on behalf of the plaintiff, you are instructed that such language would be sufficient to create the contract of insurance sued upon in this case, the other elements thereof, of its certainty and definiteness being established by the evidence, if you should so find, by a preponderance thereof."

(9) " * * * if Mr. Voorhees and the plaintiff Milligan finally agreed that he was to be insured from that time, on July 22, 1924, and without entering into the minute details of the policy that was later to be issued, the inference of the law would be that they intended the ordinary and usual contract of insurance the companies were ordinarily putting out. In this state that would be the New York Standard form, and that would be sufficient to settle the details and the terms of the contract of insurance which the law would infer; [161] if one agreed 'I will buy insurance from you to a certain amount and at a certain price for the premium' and the other says 'I will sell it to you at that price and in the amount, taking effect from to-day' the other terms would be implied to be those of the ordinary New York

Standard form, which was the form of the \$1,200 policy.”

(10) “Mr. Voorhees and the defendant insist that Mr. Voorhees had no authority to make such a contract as Mr. Milligan says was made on July 22, and Mr. Voorhees in order to corroborate the fact as he states it, that he did not make the contract, as showing he was carrying out his employer’s instructions, the defendant’s instructions, by writing to Lamping & Company to get Lamping & Company’s consent to do that, to write the insurance in that amount, to insure Mr. Milligan for \$10,000, presents these letters in evidence; but mind you, that would not be conclusive, and if Mr. Voorhees did it he was so anxious to secure that amount of insurance, and get his commission out of it, if he overstepped his instructions from the defendant, and entered into that contract with Mr. Milligan, as Mr. Milligan says he did, even though he may have violated his instructions from his company, the company would be bound by the action of Mr. Voorhees in making that contract, because, as I said before, if they hold out an agent as having a general authority to solicit and grant insurance without advising the applicant he can not enter into any such engagement, those who negotiate with the agent and secure that sort of a contract, without knowing the company has forbidden the agent to make that sort of a contract, can still call upon the company to perform.”

[161½]

(11) “If you believe the testimony on behalf

of the plaintiff Milligan, that that contract of insurance was agreed upon and made as Mr. Milligan testifies to on the night of July 22, 1924, if you believe he has established that fact by the greater weight of the evidence, in the face of the evidence put in by the defendant, why then the plaintiff is entitled to recover, and I should say the entire amount of that policy or the agreed \$10,000."

For the reason that

(1) There cannot be an oral contract of fire insurance in this state but such insurance must be in writing and on the New York standard form as provided by the statutes and laws of the State of Washington.

(2) The alleged agent of the defendant insurance company only had the right and power under the laws of the State of Washington to solicit and effect fire insurance by countersigning written policies issued by the company on the New York standard form.

(3) The alleged agent of the defendant insurance company only had the right and power under his authority from the defendant, as shown by the evidence, to solicit fire insurance and to submit applications for the same to the company for its acceptance or rejection, and if accepted and a policy issued to countersign the same as provided by the laws of the State of Washington.

V.

The Court erred in its charge to the jury wherein the Court instructed the jury that Mr. Voorhees

under the statutes and laws of this state would be authorized and have the authority to bind the defendant company under the law and under the facts shown in this case upon an oral contract or agreement of insurance until the policy of insurance could be issued, or at all, [162] as shown by the portions of the Court's instructions hereinabove set out in support of defendant's assignment of error No. IV and particularly those portions of the instructions numbered herein 1, 3, 4, 5, 6, 7, 8, 9, 10 and 11 for the reasons hereinabove assigned in support of defendant's assignment of error No. IV, and for the further reason that this action is upon an alleged oral contract of fire insurance and not on a contract to insure.

VI.

The Court erred in its charge to the jury wherein the Court instructed the jury that Mr. Voorhees was authorized to make the insurance that is mentioned in the plaintiff's complaint and sued upon in this case as shown by the portions of the Court's instructions hereinabove set out in support of defendant's fourth assignment of error and particularly those portions of the instructions numbered herein 1, 3, 4, 5, 6, 7, 8, 9, 10 and 11 for the reasons hereinabove assigned in support of defendant's assignment of error No. IV.

VII.

The Court erred in its charge to the jury wherein the Court instructed the jury that if it finds for the plaintiff, it will find for the plaintiff in the sum of

\$10,000.00 as shown by that portion of the Court's instructions hereinabove set out in support of defendant's fourth assignment of error, and herein numbered 10 for the reasons hereinabove assigned in support of the defendant's assignment of error No. IV, and for the further reason that the insurance premium was never paid. [163]

WHEREFORE the National Liberty Insurance Company of America, a corporation, plaintiff in error, prays that said judgment of the District Court of the United States for the Western District of Washington, Northern Division, may be reversed.

Dated this 1st day of August, A. D. 1925.

BATTLE, HULBERT, GATES & HEL-
SELL,
ROBT. A. HULBERT,
FRÉD G. CLARKE,

Attorneys for Defendant,
Petitioner in Error.

Copy of foregoing assignment of errors received
August 1st, 1925.

WRIGHT & WRIGHT,

Attorneys for W. A. Milligan, Plaintiff.

[Endorsed]: Filed Aug. 1, 1925. [164]

[Title of Court and Cause.]

ORDER ALLOWING WRIT OF ERROR.

This 5th day of August, 1925, came the defendant by its attorneys and filed herein and presented to the Court its petition praying for the allowance of a writ of error, an assignment of the errors intended to be urged by it, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that the amount of a bond conditioned as a supersedeas may be fixed, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the court does allow the writ of error prayed for by the defendant.

IT IS FURTHER ORDERED that a bond in the sum of Twelve Thousand Dollars conditioned according to law be executed in behalf of the defendant with good and sufficient surety to be approved by the undersigned and that upon said bond being executed, approved and filed, [165] said judgment in this cause shall forthwith be superseded, and all proceedings in this cause stayed until the final determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 5 day of August, 1925.

WM. H. HUNT,
United States Circuit Judge.

Service of foregoing order by receipt of copy thereof acknowledged this 7th day of August, 1925.

ELIAS A. WRIGHT and
SAM A. WRIGHT,

Attorneys for W. A. Milligan, Plaintiff.

[Endorsed]: Filed Aug. 7, 1925. [166]

[Title of Court and Cause.]

WRIT OF ERROR BOND.

KNOW ALL MEN BY THESE PRESENTS: That we, National Liberty Insurance Company of America, a corporation, defendant above named, is principal, and the Standard Accident Insurance Co., a corporation, organized under the laws of the State of Michigan, and authorized to transact a general surety business in the State of Washington, as surety, are held and firmly bound unto W. A. Milligan, plaintiff above named in the full and just sum of Twelve Thousand and No/100 Dollars to be paid to said W. A. Milligan, his attorneys, successors, administrators, executors, or assigns, to which payment well and truly to be made we bind ourselves, our successors, assigns, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this the 5th day of August, A. D. 1925.

WHEREAS lately at a regular term of the District Court of the United States for the Western

District of Washington, Northern Division, sitting at Seattle, in said District, in a [167] suit pending in said court between W. A. Milligan as plaintiff and National Liberty Insurance Company of America, a corporation, as defendant, cause No. 8952 on the law docket of said court final judgment was rendered against the said National Liberty Insurance Company of America, a corporation, for the sum of ten thousand dollars and costs, and the said National Liberty Insurance Company of America, a corporation, has obtained a writ of error and filed a copy thereof in the Clerk's office of the said court to reverse the judgment of the said Court in the aforesaid suit, and a citation directed to the said W. A. Milligan, plaintiff above named, citing him to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco in the State of California according to law within thirty days (30) from the date thereof.

Now the condition of the above obligation is such that if the said National Liberty Insurance Company of America, a corporation, shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

Signed: NATIONAL LIBERTY INSURANCE COMPANY OF AMERICA.

By EVART LAMPING,

Attorney-in-fact,

Principal.

STANDARD ACCIDENT INSURANCE
CO.

[Seal] By PIERCE J. DEASY,
Attorney-in-fact,
Surety.

Approved the 5 day of August, 1925.

WM. H. HUNT,
United States Circuit Judge.

Service of foregoing writ of error bond by receipt of copy thereof acknowledged this 7th day of August, 1925.

ELIAS A. WRIGHT and
SAM A. WRIGHT,
Attorneys for W. A. Milligan, Plaintiff.

[Endorsed]: Filed Aug. 7, 1925. [168]

State of California,
City and County of San Francisco,—ss.

On this 5th day of August, in the year one thousand nine hundred and twenty-five, before me, Kathryn E. Stone, a notary public in and for the said City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared Pierce J. Deasy, know to me to be the attorney-in-fact of the Standard Accident Insurance Co., the Corporation that executed the within instrument, and known to me to be the person who executed the said instrument on behalf of the Corporation therein named and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please prepare, certify and forward, as provided by law, to the United States Circuit Court of Appeals for the Ninth Circuit as a record on writ of error to the District Court of the United States for the Western District of Washington, Northern Division, a complete typewritten transcript of the following files, records and proceedings in the above-entitled cause, to wit:

Complaint.

Order of removal.

Answer.

Reply.

Verdict.

Judgment.

Motion for new trial.

Court's opinion and order overruling motion for new trial.

Order extending time to serve and lodge bill of exceptions.

Bill of exceptions. [171]

Petition for writ of error.

Assignment of errors.

Order allowing writ of error.

Supersedeas bond on writ of error.

Writ of error.

Citation on writ of error.

Order directing certification of exhibits.

This praecipe.

The provisions of the Act of February 13, 1911, are hereby expressly waived.

BATTLE, HULBERT, GATES & HEL-
SELL.

ROBT. A. HULBERT,
FRED G. CLARKE,

Attorneys for Defendant-Plaintiff in Error.

Copy of foregoing praecipe received this 19th day of August, 1925.

ELIAS A. WRIGHT and
SAM A. WRIGHT,

Attorneys for Plaintiff-Defendant in Error.

[Endorsed]: Filed Aug. 19, 1925. [172]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 172, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on

file in the office of the Clerk of said District Court, and that the same constitute the record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [173]

Clerk's fees (Act of February 11, 1925) for making record, certificate or return, 415 folios at 15¢	\$62.25
Certificate of Clerk to Transcript of record, with seal .....	.50
Certificate of Clerk to Original Exhibits, with seal .....	.50
<hr style="width: 20%; margin-left: auto; margin-right: 0;"/> Total....	\$63.25

I hereby certify that the above cost for preparing and certifying record, amounting to \$63.25, has been paid to me by attorneys for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and the original citation in this cause issued.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court,

at Seattle, in said District, this 27 day of August, 1925.

[Seal]

ED. M. LAKIN,
Clerk United States District Court Western Dis-
trict of Washington.

By S. M. H. Cook,
Deputy. [174]

[Title of Court and Cause.]

WRIT OF ERROR.

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States of America,
to the Honorable, the Judges of the District
Court of the United States for the Western
District of Washington, Northern Division,
GREETING:

Because in the record and proceedings, as also
in the rendition of the judgment of a plea which
is in the said District Court before you between
National Liberty Insurance Company of America,
a corporation, plaintiff in error, and W. A. Milligan,
defendant in error, a manifest error has happened
to the damage of National Liberty Insurance Com-
pany of America, a corporation, plaintiff in error,
as by said complaint appears, and we being willing
that error, if any hath been, should be corrected,
and full and speedy justice be done to the parties
aforesaid in this behalf, do command you if judg-

ment be therein given, that under your seal you send the record and proceedings [175] aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco in the State of California, where said Court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, and the record and proceedings aforesaid being inspected, the United States Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this 5th day of August, 1925.

[Seal] F. D. MONCKTON,
Clerk United States Circuit Court of Appeals for
the Ninth Circuit.

Allowed this the 5 day of August, A. D. 1925.

WM. H. HUNT,
United States Circuit Judge.

Service of foregoing writ of error by receipt of copy thereof acknowledged this 7th day of August, 1925.

ELIAS A. WRIGHT and
SAM A. WRIGHT,
Attorneys for W. A. Milligan, Plaintiff.

Copy of foregoing writ of error received and filed this 7th day of August, 1925.

ED. M. LAKIN,
Clerk.

By T. N. Egger,
Deputy.

[Endorsed]: Filed Aug. 7, 1925. [176]

[Title of Court and Cause.]

CITATION ON WRIT OF ERROR.

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States of America, to
W. A. Milligan, GREETING:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the courtroom of said court, in the city of San Francisco, in the State of California, within thirty (30) days after the date of this citation, pursuant to writ of error filed in the clerk's office of the District Court of the United States, for the Western District of Washington, Northern Division, wherein National Liberty Insurance Company of America, a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. TAFT,
Chief Justice of the Supreme Court of the United
States the 5 [177] day of August, A. D. 1925.

WM. H. HUNT,

United States Circuit Judge.

Service of foregoing citation on writ of error
by receipt of copy thereof acknowledged this 7th
day of August, 1925.

ELIAS A. WRIGHT and

SAM A. WRIGHT,

Attorneys for W. A. Milligan, Plaintiff.

Filed Aug. 7, 1925. [178]

[Endorsed]: No. 4681. United States Circuit
Court of Appeals for the Ninth Circuit. National
Liberty Insurance Company of America, a Corpora-
tion, Plaintiff in Error, vs. W. A. Milligan, De-
fendant in Error. Transcript of Record. Upon
Writ of Error to the United States District Court
of the Western District of Washington, Northern
Division.

Filed August 31, 1925.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Ap-
peals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Title of Court and Cause.]

STIPULATION RE PRINTING TRANSCRIPT
OF RECORD.

IT IS HEREBY STIPULATED by and between the plaintiff in error and the defendant in error, through the undersigned, their attorneys, that the Transcript of Record prepared by the Clerk of the District Court of the United States for the Western District of Washington, Northern Division, at the request of the plaintiff in error, contains all the record, proceedings and papers that the material and necessary to a hearing of this cause on Writ of Error in the above-entitled Court.

AND IT IS FURTHER STIPULATED by and between the above parties that the transcript of record as prepared by said Clerk of the District Court, and this stipulation, shall be printed as the transcript of record herein, as provided by law and the rules of the above-entitled court, omitting therefrom, however, all captions and verifications.

Dated this 27th day of August, 1925.

BATTLE, HULBERT, GATES & HEL-
SELL,

ROBT. A. HULBERT,
FRED G. CLARKE,

Attorneys for Plaintiff-in-Error.

ELIAS A. WRIGHT,
SAM A. WRIGHT,

Attorneys for Defendant-in-Error.

[Endorsed]: Filed Sep. 1, 1925. F. D. Monckton, Clerk.